

A SHORT
INTRODUCTION
TO
MORAL PHILOSOPHY,
IN THREE BOOKS;
CONTAINING THE
ELEMENTS OF ETHICKS
AND THE
LAW OF NATURE.

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AN
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TO
MORAL PHILOSOPHY.

BOOK II.

ELEMENTS OF THE LAW OF NATURE.

CHAP. IX.

Of CONTRACTS in GENERAL.

SINCE a perpetual commerce and mutual aids are absolutely necessary for the subsistence of mankind, not to speak of the conveniencies of life, God has indued men not only with reason but the powers of speech; by which we can make known to others our sentiments, desires, affections, designs, and purposes. For the right use of this faculty we have also a sublime sense implanted, naturally strengthened by our keen desires of knowledge, by which we naturally approve veracity, sincerity, and fidelity; and hate falshood, dissimulation, and deceit. Veracity and faith in our engagements, beside their own immediate beau-

ty thus approved, recommend themselves to the approbation and choice of every wise and honest man by their manifest necessity for the common interest and safety; as lies and falshood are also manifestly destructive in society.

In an intercourse of services, in commerce, and in joint labour, our sentiments, inclinations and designs must be mutually made known: and “when we affirm
“to others that we will pay or perform any thing,
“with that professed view, that another shall pay or
“perform something on his part,” then we are said to promise or contract. A covenant or contract is the
“consent of two or more to certain terms, with a
“view to constitute or abolish some obligation.” Nor does the law of nature distinguish between * *contracts* and *pactions*.

Contracts are of absolute necessity in life, and so is the maintaining of faith in them. The most wealthy must need the goods and labours of the poor, nor ought they to expect them gratuitously. There must be conferences and bargains about them, that the parties may agree about their mutual performances. Suppose all men as just and good as one could desire, nay ready for all kind offices: yet without contracts no man can depend upon the assistance of others. For when I need the aid of a neighbour, he may be engaged in some more important services to a third per-

* The difference between *contractus* and *pañum* is found in any Civil-law-dictionary.

son, or in some services to those who can give him a recompense more requisite in his affairs.

The sacred obligation of faith in contracts appears, not only from our immediate sense of its beauty, and of the deformity of the contrary, but from the mischiefs which must ensue upon violating it. 'Tis plainly more contrary to the social nature, and frequently a baser injury, to break our faith, than in other equal circumstances to have omitted or declined a duty we owe another way. By violating our faith we may quite defeat the designs of such as trusted to our integrity, and might have otherwise obtained the aid they wanted: and, from the necessity of commerce, it must appear, that the rights founded on contracts are of the *perfect* sort, to be pursued even by force. The perfidious for his part breaks off all social commerce among men.

II. AND further; tho' a good man would not take any advantage of another's weakness or ignorance in his dealings, nay would frequently free another from a bargain which proved highly inconvenient to him, and not very necessary to himself, provided any loss he sustained were made good; yet there's such a manifest necessity of maintaining faith in commerce, and of excluding the cavils which might be made from some smaller inconveniencies to one or other of the parties, that in the proper matters of commerce, the administration of which the law of nature commits to human prudence, our covenants tho' rashly made must

be valid, and constitute at least such external rights to others, as must for the common utility be maintained, tho' perhaps a good man would not insist on them. But if the person who claims them persists in his claim to the utmost, we can have no right to oppose him violently; but ought to observe our covenants; according to an old rule, that "what ought not to have been done, yet in many cases when done is obligatory."

The proper *matters of commerce* are our labours and goods, or in general, all such things as must be frequently interchanged among men for the interest of society; and by a commerce in which we neither directly violate that pious reverence due to God, nor the perfect right of another; and about which no special law of God deprives us of the right of transacting.

III. We must distinguish from contracts *the bare declarations of our future intentions*; which neither transfer any right to others nor bind us to continue in the same purpose. What come nearer to contracts are these *imperfect promises*, in which from custom 'tis understood, that we convey no right to others to oblige us to performance, but only bind ourselves in honour and veracity; and that too only upon condition, that the person to whom we make such promises so behave as to be worthy of the favour designed him, and don't by his bad conduct give us just cause of altering our intentions: and in this point the promiser reserves to himself the right of judging; nor does he bring him-

self under an higher perfect obligation, than that of compensating any loss the other may sustain, even tho' he should without cause alter his purpose.

IV. The circumstances to be considered in explaining the nature of contracts and the just exceptions against their obligation, relate either to the *understanding*, or the *will*, the two internal principles of action, or the *matter* about which they are made.

As to the *understanding*; the common interest, as well as humanity, requires, that no person should sustain any damage on account of any ignorance in his own affairs which is no way faulty. And hence the contracts of minors unacquainted with the nature of the business, are not obligatory; nor of those seized with madness or dotage, nor of idiots, nor even of men quite disordered by drunkenness so as to have lost the use of their reason. And altho' there may be a great crime in drunkenness which may justly be punished; yet this is no reason why the fraudulent and covetous should be allowed to make a prey of them. The case is very different as to crimes or injuries done by men intoxicated. For tho' we are not bound with respect to others to preserve ourselves always in a condition fit for transacting of business, yet we are bound to preserve ourselves innocent continually, and to avoid doing injuries. If one of the parties was not aware that the other was intoxicated; this later will be bound to make good any loss the other sustained by his nonperformance of the contract. But there are many degrees

of intoxication, some of which tho' they may abate our caution and prudence, yet don't deprive us of the necessary use of reason. If all these degrees also made contracts void, there could be no sure transactions among men. Questions concerning these degrees, must be decided in the several cases by the judgment of prudent arbitrators.

The same might be said concerning the imprudence of youth, previous to civil laws: since the degree of prudence requisite for commerce appears in different persons at very different ages. That therefore commerce may be ascertained, and such endless evasions prevented, 'tis absolutely necessary that in every society some certain age be agreed upon, to which whosoever attains must be deemed his own master, and capable of managing his own business. This age must be determined with this view, that as few as possible of ripe judgment be excluded from the administration of their own affairs, and yet as few as possible admitted before the maturity of judgment. The medium fixed by the Roman law is as good as any; that minors before fourteen years of age in males, and twelve in females, should have no management of their affairs, but be under the natural guardianship of their parents; or, if they are dead, under that of the guardians their parents or the law has appointed: and after these years, till twenty-one, or as it was in their earlier times, till twenty-five, they should be so subjected to curators, that no deed of theirs intended to

bind themselves or their fortunes, should be deemed valid without the consent of their curators.

'Tis on one hand unjust that minors should sustain losses in contracts; but 'tis on the other hand unjust that they should be enriched at the expence of others. If therefore any contract has been made with them, and something paid or performed by the other party, if it is not detrimental to them to confirm the contract, they ought to do it when they come to maturity: if it be found detrimental, they should restore or compensate what was received on that account, or as far as they were profited. Minors before the legal years often have sufficient judgment in certain matters; and when it is so, nor was there any thing fraudulent or faulty on the other side, they are bound before God and their own consciences by their contracts, even as the adult.

When parents or curators are at hand, one can scarce without a gross fault enter into any important contracts with a minor without their consent. As generally the passions of the young are impetuous and incautious; they are rash in promising, keen in their desires, improvident, liberal, full of hopes and void of all suspicion.

V. He who was engaged into a contract by any mistake or error about the very nature of the object or goods, or these qualities which are chiefly regarded in them, is not bound: and whatever he has paid on that account should be restored. But no man has this plea

who was engaged only by a secret expectation of such qualities as he did not openly insist on, or of such as are not commonly expected in such goods. If the mistake was about some different matter or event, which moved him to the bargain; when the mistake is discovered, humanity may require it of the other party to set him free, especially if he is ready to compensate any damage occasioned by his mistake. But this is not a matter of perfect obligation, unless the person in the mistake made it an express condition of the bargain.

The nature of the goods, and the qualities upon which their value depends, and the defects of such qualities, are, as they speak, *essential points* in contracts. Where one of the parties has been in a mistake about them he is not bound. Where the mistake has been only about the current price; the person deceived and sustaining the loss has a perfect right to have the price reduced to equality; which if the other party refuses the bargain may be made void.

Whoever by any fault or rashness of his caused the mistake of the other party, or fell into a mistake himself, is bound to compensate any loss the other thereby sustains: but he that dealt fraudulently, is bound further to make good any profit the other could have made, had the bargain been executed with integrity*.

* The Civilians thus distinguish between *penſare damnum*, and *præſtare quod intereſt*: obliging thoſe who wrong others through negligence or inadvertence to the former only, but

Any promises or contracts obtained from us by the fraud of the person with whom we contracted, are plainly void; because through his fraud we wanted the due knowledge requisite in contracting, and he is bound to compensate our damage occasioned by his fraud, which is easiest done by making the bargain void.

Where the fraud of a third person has moved us to a contract without any collusion with the other party; the bargain is valid. But we have a right of demanding compensation of any loss from that third person who deceived us.

VI. We always deem that all such voluntarily consent who voluntarily use such signs of consenting as by custom import it. Nor could there be any faith maintained, if we allowed exceptions from a secret dissent contrary to our expressions.

Words and writing are the fittest methods of declaring consent: but any other sign agreed upon by the parties, or received by common custom is sufficient. Nay some actions in certain circumstances are justly deemed to declare consent, when they are such as no man of common sense or equity would do, unless he also consented to certain terms. From such actions therefore we justly conclude a person's consent, unless he timely premonish all concerned of the contrary. Covenants or contracts founded on consent thus de- in case of fraud or more gross negligence obliging always to the later.

clared are called *tacit*: which are distinguished from another set of obligations, to be presently explained, said to arise * *after the manner of contracts*, by this, that in tacit contracts the obligation is prevented by an express declaration to the contrary; but not in the others.

Beside the principal expressed articles in contracts, there are frequently others plainly understood as adjected from the very nature of the transaction, or from the prevailing custom among all who are engaged in such business.

The consent of both parties, of the receiver as well as the giver, is necessary in all translation either of property or any other rights, whether gratuitous or not. For from one's intention of bestowing any thing on a friend, we cannot conclude any design of throwing it away in case he don't accept, or of forcing it upon him. But a lower sort of evidence will serve to prove a consent to accept any thing valuable; and we may always presume upon it, if the thing was previously requested; provided the offer answer the request.

But as in full property there's included a right of disposing under any lawful conditions, or upon any contingency; and of giving in trust to a friend, till some future event happens: inheritances and legacies may thus be left with trustees, till it be found whether the heirs designed, or the legatees are willing to ac-

* Chap. xiv.

cept. Nay goods may thus be kept in favours of persons not yet existing; as it is unjust to hinder the proprietor to appoint his goods thus to be reserved for the offspring of his friends if they shall happen to have any: and 'tis injurious toward such offspring to have defeated or intercepted any benefits destined for them by their deceased parents, kinsmen, or friends. And yet no heir or legatee can be forced to be proprietor of any thing thus left to him without his own consent. Mankind however, and each one as he has opportunity, when no special trustee is appointed, ought to take this care of infants, or persons unborn, to preserve such inheritances or legacies for their behoof, till they can accept them.

VII. As the obligation of contracts plainly depends on the consent of the parties, and without it is void; so when it was only given under certain conditions, if they don't exist, there's no obligation. But such conditions must be known as such on both sides, otherwise there could be no faith in our transactions. These conditions therefore alone are of such force as that their non-existence makes the transaction void, which were either expressly made conditions by one or other of the parties, or which the person who insists on them did in conscience believe the other party understood as adjoined from the nature of the affair; and not every one which one of the parties might secretly expect would exist, tho' the like is not ordinarily expected in such transactions. Whatever indeed one party has un-

dertaken for to the other, or positively affirmed to him to engage him to the bargain, *that* the other party may justly be deemed to have made a condition of his consenting.

In the known division of contracts into *absolute* and *conditional*, by a condition is understood "some event" "yet uncertain to one or both the parties, distinct" "from the prestations covenanted, upon the existence" "of which the validity of the contract depends." A condition known to be naturally impossible, shews that there's no engagement. We shall presently speak of another sort of impossibility from the prohibition of law, or moral turpitude. But a vitious action of any third person, to be done without any aid of the parties contracting, may be a just condition; provided nothing in the contract give any invitation to such actions.

Conditions in the power of either party are called *voluntary*; others are *involuntary*; and some are of a mixed nature. But neither side is understood to be obliged to make these conditions called voluntary or mixed to exist, * for then they would be absolute covenants of the bargain.

VIII. THE due freedom of consent may be taken

* A voluntary condition is of this sort: "If I shall retire" "to live in the country, I agree to set my city-house at such" "a rent." By this I don't bind myself to live in the country. "I promise, if I incline to sell certain lands, that such" "a man shall have them at a certain price."

away by fear. But of this there are two sorts, one denoting a suspicion that when one party has fulfilled his part of the bargain, the other party won't fulfil his: the other denotes a terror occasioned by some great evil threatened. As to the former sort these observations seem just: 1. He that voluntarily contracts with openly unjust and impious men, whose characters he previously knew, is plainly obliged by his contract, as he must have tacitly renounced any exception from their character, which was previously known. But 2dly. If he only comes to the knowledge of their characters after the contract, 'tis not indeed void; but he may justly delay performing on his part, till they give such security for the performance of theirs as a wise arbiter judges sufficient. To maintain that all contracts entered into with the unjust, or heretical or impious, are void, would destroy all faith among men; since there are no such obvious characteristics to distinguish the good from the bad as all will agree in: and considering the weaknesses of mankind, they have always had the most opposite opinions about the moral and religious characters of men around them; as in all ages there have been the greatest diversities and contrarieties of opinions.

As to the second sort of fear; when I have been forced into a contract by fear of evil threatened: there are two cases, according as the evil is unjustly threatened either by him I contract with, or by a third person without any collusion with the person I contract

with. In the later case when by contract I obtain the aid of an innocent man against dangers threatened by another, no doubt I am bound; unless there be something very exorbitant in the terms. For the giving aid in such perils is no doubt a most useful service well deserving compensation.

If indeed I am threatened unjustly with some great evil by any man unless I enter into a certain bargain, or make a promise to a third person, who is in no collusion with him who threatens me, while yet I am forced to conceal from him the terror I am under; the bargain or promise is void, because by this terror I am deprived of that liberty which is necessary in commerce. But any damage this innocent person sustains by the disappointment, I am bound to make it good, as it was occasioned by me for my own safety. The same holds, when through my cowardice I have been excessively afraid without cause.

Any contracts entered into from fear of a just magistrate, or the sentence of a judge, are plainly valid, since we are deemed subjected to such civil power.

IX. BUT when I am forced to contract through fear of evils unjustly threatened by the very party I contract with, we must distinguish whether these evils are threatened under some such plausible shew of right as might possibly impose upon an honest man, or on the other hand, by openly avowed injustice, without any such shadow of right. In the former case, tho' the author of such violence acquires no right by it,

which he can use with a good conscience; yet on account of some more distant interests of mankind, he may have a sort of *external right*, with which the other party may be bound to comply. Nothing is more incident to mankind than to mistake about their rights; and hence arise wars too frequently, while yet neither side is sensible of the injustice of their cause. These wars must either be composed by treaties and contracts, or must end with the ruin of one side. Now 'tis highly eligible that they should be ended rather by some treaty: and treaties could be of no use if they still lay open to this exception of unjust force, which either side might plead whensoever they inclined to renew the old controversy. This exception therefore must not be allowed against treaties of peace, when there were any plausible pretences on both sides for the preceeding war. If indeed the terms of peace are manifestly iniquitous and oppressive, contrary to all humanity, making life quite miserable and slavish to the less fortunate side; such treaties have no plausible shews of justice, and ly open to the exception*.

But where violence is used or threatened, without any pretence of right, to extort promises or contracts, they cannot be obligatory. By such violence the author of it plainly abdicates or forfeits all the rights of men; all the benefits to be claimed from the law of nature, or the humanity of his fellows; as he openly

* See Book II. Ch. xv. 8. and Book III. Ch. vii. 8. 9.

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* See Book II. Ch. xv. 8. and Book III. Ch. vii. 8. 9.

professes himself a common enemy to all, free from any social tie. The common safety therefore requires that such monsters should be cut off by any means. Suppose that such extorted promises were valid, yet whatever upon such a promise is due to the author of the violence, he is always indebted at least as much to the person thus compelled, upon account of damage done him unjustly: these two claims therefore extinguish each other by *compensation*. Nor can one here allege that by the act of promising under this terror the promiser tacitly renounces this exception of unjust force previously known; for this forced renunciation alleged is one part of the damage: and what pretence is there of alleging an obligation by tacit compact, to one who in such a cause is incapable of acquiring a right by the most express contract, and who in this very affair abdicates or forfeits all human rights?

But, however that no regard is to be had to such persons in thus trampling upon all the rights of mankind, yet when they sufficiently appear to be returning to a soberer mind, asking pardon of what's past, offering to quit their fastnesses, to deliver their arms, and to give security for their future conduct; and when such confederacies cannot be otherwise destroyed without shedding much innocent blood of our citizens; the common interest may sometimes require to enter into such treaties with them, and to observe them faithfully: and as to any of our citizens who by this means are excluded from prosecuting them for re-

paration of damages, they ought to obtain it from the community.

X. CONTRACTS or promises cannot be of force unless the matter of them be *possible* to the parties: and therefore no man can be obliged to * what he cannot accomplish tho' he seriously desired it. If one has promised any thing, which by some subsequent accident without his fault becomes impossible, he is only obliged to restore or compensate the value of any thing he received in consideration of it. Where the fraud or other gross fault of one party either made the matter impossible, or concealed the impossibility, he is obliged to make good † the profit which would otherwise have arisen to the other.

The matter of contracts must also be lawful: that is, our contracts or promises should be only about the natural matters of commerce, which can be alienated, the administration of which is committed to human prudence, and not prohibited by any special law. No obligation therefore can arise from any promise, to violate directly the reverence due to God, or the perfect rights of others, or to do what any special law prohibits, or what is not committed to our power.

I. If therefore both parties know the unlawfulness of the terms of any contract, or ought to have known it; the contract is void. The one who employed another to commit a crime, may redemand what

* Book II. Ch. iii. 2.

† *Praestare quod interest.*

he gave to the person hired, before he has committed the crime. And if the crime be previously committed, the executor ought not to have the hire; nor if he previously received it, can the person who hired him redemand it. Both equally deserve the highest punishments; nor should either hold any advantage by such engagements.

If after the contract the iniquity of it appears to either side, which they had not formerly considered; before execution either of them may free himself from it: and any reward given should be restored. Nor after execution can the person employed claim his reward, unless the moral turpitude affect only the hirer and not himself; or unless his ignorance was no way culpable. But where the turpitude only affects the person who employed him, then he may justly claim his hire. 'Tis the general interest of mankind that there should be no allurements to such crimes, nor dependence upon such contracts.

But if the vice in any performance of covenant only consist in this, that a man has managed imprudently and contrary to the duty of a discreet cautious man, in these matters which naturally fall under commerce; 'tis of such importance to maintain the faith of commerce, that in this case, too "our transactions and "covenants are obligatory, tho' we were faulty in entering into them."

Covenants about the goods or actions of others which are not subjected to our power, are in the same

case with those about impossibilities. Whoever has acted fraudulently in such covenants is liable to make good all the profit which would have accrued from the faithful performance of them: and he who has deceived others by any culpable negligence is obliged to compensate the damages.

XI. EVERY sort of contracts about one's goods or labours does not immediately divest him of all moral power of transacting about them in a different manner with others. This is the case only in such as convey the entire property at once, or a real right; or such as give another the whole right to one's labours for a certain time, or during life, so as to preclude his contracting with others about the same. But when one has only made a contract constituting a *personal right* against himself, he may thereafter convey a valid *real* right, to such as knew nothing about the former contract, which will take place of the personal right tho' prior. Where indeed this new grantee has acted fraudulently, being apprized of the former contract; the subsequent one should be void. For the law of nature can never confirm frauds, or any * contracts plainly contrived and designed to elude any obligations of humanity, when this design must be known to both parties in the contract. But in other cases, "of two covenants entered into with the same person, the later derogates from the former." But of

* Matth. xv. 5. Mark vii. 11.

contracts entered into about the same thing with different persons, "such as convey a real right take place " of those which only convey a personal;" provided there has been no fraud on his part to whom the (real right is transferred. And lastly in contracts of the same nature entered into with different persons, "the " prior takes place of the posterior."

XII. WE may contract by *factors* or *agents*, or persons commissioned for that purpose, as well as in our own persons. Where full powers are given, and no special instructions to be shewn to all he deals with, expressing the extent of our agent's commission, and how far we subject our rights to his transactions; we are deemed to be obliged to ratify what he does in our name, unless we can make proof that he acted fraudulently, or was bribed by the other party; or the manifest iniquity of his deeds satisfy a prudent arbitrator that he must have been corrupted. As to any smaller injuries we sustain, we must impute them to our agent, while we ratify what he has done with others.

But when the powers of the agent are specially declared to all concerned, what he transacts beyond these bounds does not oblige his constituent.

C H A P. X.

OUR OBLIGATIONS IN SPEECH.

OUR duties in the use of speech have a near affinity to those in contracts. Mankind enjoy this preeminence above other animals, that they have the powers of reason and speech, by which chiefly a social life, commerce, and an intercourse of kind offices are maintained. 'Tis in general plain that we are bound to use these excellent gifts of God in such manner as is most conducive to the general good, and suitable to our several obligations in life.

In this important matter we have very manifest indications of what God requires of us, in the very structure of our nature: an immediate sense seems to recommend that use of speech which the common interest requires. In our tender years we are naturally prone to discover candidly all we know. We have a natural aversion to all falshood and dissimulation, until we experience some inconveniency from this openness of heart, which we at first approve. Reflection, a regard to the common good, and a prudent care of our own safety, will often persuade us to conceal or be silent about certain things; and to restrain the first impulse of our mind. But when we resolve to speak to others, then both the immediate sense of our hearts, and a rational regard to the common interest, will re-

commend and enjoin upon us the steady rule or purpose, of speaking nothing contrary to the sentiments of our heart, or which will deceive others. These are our natural sentiments whether we are judging of our own conduct or that of others.

For as a great share of the most useful knowledge in the affairs of life, as well as that of a more speculative kind, is acquired from the conversation of others who are under no special obligations of communicating to us their sentiments; this advantage of a social life, not to mention the pleasures of conversation with mutual confidence, must be entirely lost, unless men maintain truth and fidelity in all their discourse with each other.

What we say of speech holds also concerning other signs used for the same purpose of communicating our sentiments, viz. common writing, or hieroglyphicks.

II. We must also observe here that there's a twofold use of signs, whether natural, or artificial and instituted: * one in which the person who causes the appearance is never imagined to make any profession, or to have any intention of communicating his sentiments to others. The spectator according to his own sagacity concludes from the appearances some fact or other, without imagining that the person who occasioned these appearances did it with a view to give him

* See Grotius de Jure belli, &c. L. III. c. 8.

any information. The other use of signs is of such a nature that it plainly contains this profession, or gives the observer just ground to conclude that such signs were made designedly to intimate something to him.

In the former way of making signs, there's no peculiar obligation: we are only under that obligation common to all parts of life, to do no hurt to our neighbour without a just cause. But when there is just cause, as in the case of a just war, we may without blame use such arts of deceiving, which are called *stratagems*. Nay provided we do no hurt to any innocent person, there's no crime in deceiving * by such sort of signs our very best friends.

But we are under very different obligations as to the other use of signs. For without presupposing any old covenant or formal express agreement, the very use of signs in certain circumstances may plainly contain the nature of a *tacit convention*, and he who exhibits them is justly understood to covenant with the other to communicate his sentiments, according to that interpretation of these signs which is either natural or customary, unless there be some special reason † in the

* Thus an army intending to decamp in the night, yet keep all their fires burning in the old places, to conceal their motions. A studious man to avoid interruption, keeps his doors shut, and his street-windows darkened, whence we conclude that he is abroad.

† A cypher agreed upon, for instance.

case, known on both sides, why we should depart from the ordinary interpretation. For did we not universally understand such an agreement as to speech, it would be a ridiculous action either to address speech to another or to listen to it. And the same holds as to * other signs natural or instituted, used in this manner.

These therefore are the laws of speech and writing. I. "Where others have a right to know the whole sentiments of the speaker, he is obliged not only to speak truth but to reveal the whole truth." This holds as to witnesses in courts of justice, and such as have engaged to communicate the whole mysteries of any art.

The second law is, "Tho' others may have no peculiar right to know our sentiments, yet when we speak to them, we should say nothing but what agrees with our sentiments according to the common interpretation which obtains among men of understanding." One is therefore guilty of falshood or lying who speaks what is thus contrary to his sentiments, altho' by some unusual way of interpreting the words, or by some mental reservation, it might agree with them. If such arts were allowed, a gate would be opened to all deceit and fraud.

III. THAT our duty in this point may the better

* Thus sending wings or spurs to a friend at court, intimates to him that we imagine he is in danger, and contains this profession.

appear, we must observe, 1. that all signs, especially words should be used in the customary manner, without regard to antient obsolete meanings or etymologies. Expressions of civility and courtesy, or titles of honour, deceive no body. They are known not to signify what the same words do on other occasions.

2. If 'tis known to all concerned that in some affairs certain persons are allowed to deceive; nor does the person deceived, when he comes to discover it, complain of it as an injury; what artifice or false-speaking is used in these affairs is not deemed criminal. This is the case in many diversions; and sometimes in serious business, when we commit ourselves entirely to the conduct of others, in whose wisdom and fidelity we confide; as patients do to physicians, and soldiers to their commanders in chief.

3. Nay if the custom has prevailed in war, that enemies deceive each other by false narrations when they can, nor do the deceived complain of it as a violation of the laws of civilized nations: one may judge that by a new tacit convention enemies have remitted to each other that right otherwise founded in the general convention contained in the addressing of speech to others. But a candid mind would not without the most urgent causes use such methods, since they have a strong appearance of moral turpitude.

4. But the deceiving of enemies by any pretence of a treaty or covenant, never was nor can be allowed.

As it is by treaties alone that we can maintain the more humane methods of carrying on war, and prevent the most savage cruelties; or restore peace again without the destruction of one side, or reducing them to miserable slavery.

5. But this obligation about speech, as all others founded in tacit conventions may be prevented or taken away, by a * timely premonition of all concerned.

6. Beside the above-mentioned exception of unjust force in matters of contracts, some plead for another exception from some grievous and extraordinary necessities; when without false-speaking we cannot preserve the innocent, or the most worthy perhaps of mankind, or even a whole nation, from ruin. Whatever force there is in this exception, 'tis plain it is not peculiar to this subject; since it seems, as we shall † hereafter shew, that this exception takes place in most of the other special laws of nature.

7. Where men with malicious intentions, and without having any right to demand it, are endeavouring to discover a person's sentiments by captious and insidious questions; when even his silence would discover all they want to his ruin: if there occur to him such answers as to good unprejudiced men would bear a true signification according to his sentiments, while yet they will appear to these insidious enemies to sig-

* See the preceding Chap. § 6.

† Ch. xvi. of this Book.

nify something very different; * he may use such evasive answers, tho' he foresees that his unjust enemies will be deceived by them.

8. Since maintaining veracity in all our conversation is of such importance in society, 'tis plainly unlawful to use false-speaking from any of those smaller motives which frequently occur in life; such as, to pacify men in a passion of anger, or to comfort the sorrowful; or in general to obtain any advantages or avert any evils which are not of the very highest kinds. For we may by other means consistent with all candour and sincerity generally obtain these ends more effectually, and either prevent these evils, or assist men to bear them with fortitude. And however such false-speaking may at first have some effect, before it becomes known that we make no conscience of speaking truth in such cases; yet, when this is once known, and when men generally take this liberty, they lose all credit in such cases with others, and mutual confidence is destroyed. So much concerning veracity.

IV. BUT there are other sacred duties in the use of speech; and this in the first place, that we study to make our speech profitable to others, in recommending and cherishing sincere virtue, in correcting the vain imaginations of men about the true happiness of life; in teaching, admonishing, exhorting, comforting,

* Of this there are instances in very great characters; as also of many expressions which the speaker abundantly knew that the hearers would understand in a very false sense.

and sometimes reproving sharply, and all these shewing an hearty intention of doing good. These too are among the most honourable offices, to reconcile friends who have been at variance, to prevent animosities, or to compose them. Nor is there any thing a good man will more conscientiously avoid than hurting the characters of others. Nay he will not only avoid the spreading of false calumnies, but will conceal the secret faults of others, unless he be forced to divulge them to prevent the seducing the innocent, or to avert some public evil. For men who have lost their characters and are publicly infamous, are on this account far harder to be reclaimed to virtue; and the more that vice appears to abound in the world, the vicious grow the more impudent.

Critics have observed that many words, beside their primary meaning, have also an additional signification of the dispositions of the speaker: and hence there are often three sorts of names for the same things, or actions. One of a middle nature, barely denoting its object; another denoting the speaker's delight in it, or his keen passion for it; the third denoting his aversion and hatred of it. And from this we see how to answer the reasonings of the old Cynics, against supposing any crime in obscenity of language; that tho' it be true, there's no work of God, or natural action, which may not be a proper subject of inquiry and speech to a good man, on some occasions, yet we may evidence great depravation and turpitude of mind in

speaking about the dissolute actions of others: to wit, by using such words as betray a like dissolute temper in ourselves, and a delight in such vices, and kindle like vitious passions in the minds of the hearers. And in this consists obscenity, which is hateful and detestable in conversation.

C H A P. XI.

Of OATHS and VOWS.

OATHS are deemed a natural confirmation of promises or testimonies, in the more important affairs: an *oath* is “a religious act in which for confirmation of something doubtful, we invoke God as “witness and avenger, if we swerve from truth.” A truly good man indeed will so strictly regard veracity, that such as know him well need not require his oath. But when the interests of those are at stake who know not his character, they may justly demand his oath, in confirmation either of his testimony or his promise. Since the using of oaths in such cases contains no impiety toward God; but is rather an expression of pious reverence; as we acknowledge in swearing his universal knowledge, and government, and justice.

And since this persuasion has obtained, in all nations and ages, that God exercises a just government over the world, inflicting punishments on the wicked; this invocation of God as witness and avenger must raise in mens minds an higher sense of their obligations, and deter them from falsehood. But we must not imagine that our invocations make God more attentive in observing, or more keen in punishing of perfidy; or that by our voluntary consent, we give him any new right of punishing he had not before. Our

own guilt indeed is made much greater when, after the confirmation of an oath, we either violate our promises, or falsify in our testimony.

To swear about trifling matters, or without any cause, is very impious; as it plainly tends to abate that awful reverence which all good men should constantly maintain toward God; and is a plain indication of contempt. Where perjuries in serious matters grow frequent in any state, the magistrates or legislators are generally chargeable with much of the guilt; if they either frequently exact oaths without necessity in smaller matters, or when the oaths give no security in the point in view*; when the engagement designed may either be impracticable, or appear to the persons concerned to be unlawful; or if oaths are required† where there are great temptations to perjury, with hopes of impunity from men. They also do bad service to religion who don't appoint an awful solemn form of words, fit to strike the minds of men with reverence in such an action.

II. 'Tis no doubt vain to exact from others, or to swear by any being whom the swearer judges not invested with divine power, so as to invoke that being

* Thus engagements by oath to adhere to certain schemes of religion, which may afterwards appear false; or to a government which may appear an unjust usurpation.

† Thus *purgatory oaths* as to capital crimes, or very secret matters of scandal, or injustice, or about a man's secret opinions, generally have no good effect.

as witness and avenger. And yet there are some forms of oaths truly valid and not unlawful, tho' not the most convenient, where without expressing the name of God, the swearer either names something very dear or necessary to himself * upon which he is understood to imprecate the divine vengeance, or that he may be deprived of it if he should act perfidiously; or truly invokes God under some † metonymical expression.

Tho' it be idle to exact an oath from any one by any being whom he conceives not as endued with divine power, nor exercising any providence; yet there are certain general descriptions of the Deity in which men of the most opposite religions agree: such therefore ought to be used, when persons of different religious sentiments are required to swear.

As in covenants, so in oaths, he is justly deemed to have sworn, and to be liable to the penalties of perjury should he falsify, who professing an intention of swearing makes such signs as ordinarily signify to others that one swears.

Altho' an oath and a promise, or an assertion, may often be expressed by one and the same grammatical sentence; yet the act of swearing is plainly a distinct

* So we understand swearing by one's *head*, his *life*, his *soul*, his *children*, his *prince* or *patron*, the *earth*, the *light*, the *sun*.

† 'Tis thus men swear by their *faith*, viz. the object of it; or by the *heavens*, the *temples*, or *altars*; for the Divinity residing in them, or to whom they are dedicated.

one from that of promising or asserting; as it consists in the invocation of God to avenge if we violate our faith. This shews therefore that mens duties are not altered as to their matter by an oath; nor any new matter of obligation produced; nor any covenant or promise otherwise void confirmed; nor just exceptions excluded; nor conditional contracts made absolute; nor any obligation imposed to act contrary to the perfect rights of others, or about matters not subjected to our power, or what would be a direct piece of irreverence and impiety toward God, or a violation of any special prohibition, by which we are precluded from transacting in certain affairs. But in matters naturally subjected to our power and committed to human prudence, as we may bind ourselves by a common contract, so much more by one confirmed by oath, even when we have entered into it imprudently and rashly, contrary to the rules of discretion; unless when there has been a plain obvious fraudulent design of defeating some obligations of humanity.*

III. A PROMISE tho' confirmed by oath can produce no obligation, unless it has been accepted by the other party, who also after his acceptance may remit to us his right, and free us from the promise. A promise in like manner is void, upon the declared dissent of a person whose consent was necessary before the promiser could oblige himself, or the other party accept of it.

* Mark vii. 11, 12, 13.

Where one requires of us an oath by his just authority, and prescribes to us the form of words; if we understand his sense of the words, and can sincerely swear in that sense, 'tis well; if not, we should not take the oath. No inferior magistrate deputed to take an oath in the name of the state has a right to give explications of the *formula* prescribed by the supreme powers.

Oaths according to their different purposes are divided into *promissory* and *assertory*. Oaths of this latter sort when required by a judge are called *necessary*; and when one party in judgment refers the cause to the oath of the other, 'tis called *judicial*. If this be done, not in judgment, but by the private deed of the parties, 'tis called *voluntary*. When an oath is demanded from the person accused in a criminal action, to refute imperfect proof; 'tis called a *purgatory oath*, or *oath of purgation*.

But in such cases where a person's life or character is concerned, as there are very high temptations to perjury; this way of exacting purgatory oaths in trials is highly improper and unjust. By this means the impious and wicked will always be absolved; and those only convicted who retain such a sense of piety that they won't even for preservation of life or character perjure themselves. A good man surely would rather choose that such persons should escape punishment for a doubtful crime, (of which, if they have really been guilty, they will probably soon repent sin-

cerely,) than that they should be brought to suffer by their very sense of religion.

IV. A **vow** is a religious promise made to God about something to be done or performed. In vows we don't conceive a right transferred to men, unless they have been also attended with a contract. The main use of vows is this, that by a serious consideration of a just and holy Deity beholding all our actions, we may further confirm all our pious and virtuous resolutions; and be the more cautious of neglecting our duty, lest we should also involve ourselves in the horrid guilt of perjury.

But as no promise not accepted by the party to whom 'tis made can be obligatory; and as we are sure God will not accept any promises made to him rashly, out of any sudden fear, or other passion, which is contrary to the man's duty; and 'tis most unworthy of the Deity to imagine him as it were insidiously watching to catch advantages of the incautious, timorous, wrathful, or superstitious; or that, contrary to the common interest of all, he has some favourite orders of men for whose advantage he is acting the part of a sharpening agent, snatching at all opportunities of gain to them; hence it must appear, that vows can produce no obligation to such actions or performances as would not antecedently have been pious, humane, and prudent. Much less are vows of any avail which men take on themselves from hatred, envy, groundless or excessive anger, or contrary to either the perfect rights

of others, or even any obligations of humanity*. Vows therefore produce no new matter of obligation.

C H A P. XH.

Concerning the VALUES or PRICES of GOODS.

TO maintain any commerce among men in inter-changing of goods or services, the values of them must be some way estimated: for no man would give away things of important and lasting use or pleasure in exchange for such as yielded little of either; nor goods which cost much labour in acquiring, for such as can easily be obtained.

The ground of all price must be some *fitness* in the things to yield some use or pleasure in life; without this, they can be of no value. But this being presupposed, the prices of things will be in a compound proportion of the *demand* for them, and the *difficulty* in acquiring them. The *demand* will be in proportion to the numbers who are wanting them, or their necessity to life. The *difficulty* may be occasioned many ways; if the quantities of them in the world be small; if any accidents make the quantity less than ordinary; if much toil is required in producing them, or much ingenuity, or a more elegant genius in the artists; if the persons employed about them according to the

* Mark vii. 11, 12.

custom of the country are men in high account, and live in a more splendid manner; for the expence of this must be defrayed by the higher profits of their labours, and few can be thus maintained.

Some goods of the highest use, yet have either no price or but a small one. If there's such plenty in nature that they are acquired almost without any labour, they have no price; if they may be acquired by easy common labour, they are of small price. Such is the goodness of God to us, that the most useful and necessary things are generally very plentiful and easily acquired.

Other things of great use have no price, either because they are naturally destined for community, or cannot come into commerce but as appendages of something else, the price of which may be increased by them, tho' they cannot be separately estimated*; or because some law natural or positive prohibits all buying or selling of them. Of this last sort are all religious offices, actions, or privileges; and even the salaries of religious offices, which are either deemed only what is necessary for the support of persons in such offices, or are committed to their trust as funds of liberality and charity toward the indigent. Buying and selling of such things from a well known piece of history is called *simony*.

II. But as it may often happen that I want some

* Examples of these sorts are the air, the light of the sun, wholesome air in certain situations, fine prospects.

goods of which my neighbour has plenty, while I have plenty of other goods beyond my own use, and yet he may have no need of any of my superfluous stores; or that the goods I am stored with beyond my occasions, may be quite superior in value to all I want from my neighbour, but my goods cannot be divided into parcels without great loss: for managing of commerce there must some sort of standard goods be agreed upon; something settled as the measure of value to all others; which must be so generally demanded, that every one will be willing to take it in exchange for other goods, since by it he may obtain whatever he desires. And indeed as soon as any thing is thus made the standard of all values, the demand for it will become universal, as it will serve every purpose

The goods which are made the standard, should have these properties; first, they should be of high value, that so a small portable quantity of them may be equal in value to a great quantity of other things; again, they should not be perishable, or such as wear much in use; and lastly they should admit of all manner of divisions without loss. Now these three properties are found only in the two more rare metals, silver and gold; which therefore have been made the standards of commerce in all civilized nations.

III. AT first they have dealt in them by * weight;

* This appears both by history, and the Roman word *impendere, expendere, &c.*

but to prevent the trouble of making accurate divisions of the several bars or pieces of metal, and to prevent frauds by mixing them with baser metals, *coinage* has been introduced. For when the coining of money is committed under proper regulations to trusty hands, there's security given to all for the quantities of pure metal in each piece, and any broken sums agreed upon can be exactly paid without any trouble.

But the real value of these metals and of money too, like that of all other goods, is lessened as they are more plentiful; and increase when they grow scarcer, tho' the pieces keep the same names. The common necessities of life have a more stable natural price, tho' there are some little changes of their values according to the fruitfulness of the several seasons. Were one to settle perpetual salaries to certain offices, which should support men perpetually in the same station in respect to their neighbours, these salaries should be constituted in certain quantities of such necessary goods as depend upon the plain inartificial labours of men, such as grain, or other necessities in a plain simple way of living.

IV. No state which holds any commerce with its neighbours can at pleasure alter the values of their coin in proportion to that of goods. Foreigners pay regard, not to the names we give, but to the real quantities of pure metal in our coin, and therefore the rates of goods must be proportioned to these quan-

tities. But after a legal settlement of the denominations of coins, and many contracts and obligations settled in these legal sums or denominations, a decree of state raising the nominal values of the pieces will be a fraud upon all the creditors, and do much gain to the debtors; and the lowering their nominal values will have just the contrary effects.

The values too of these two metals may alter their proportions to each other; if an extraordinary quantity of either of them be brought from the mines; or a great consumption made only of one of them in the ornaments of life, or great quantities of it exported. And unless the legal denominations or values of the pieces be changed in like manner, such coin as is valued with us too low in proportion to the natural value of the metal, will be exported; and what is valued with us too high will remain, or be imported, to the great detriment of the country.

Wheresoever a coinage is made in baser metals, the quantities in each piece must be made so much the greater; otherwise the trade with foreigners must be lost. When notes or tickets pass for money, their value depends on this, that they give good security for the payment of certain sums of gold or silver.

C H A P. XIII.

Of the SEVERAL SORTS of CONTRACTS.

CONTRACTS are divided into the *beneficent* and *onerous* : in the former some advantage is gratuitously designed for one of the parties ; in the later the interest of both is equally regarded, and the parties profess to transfer mutually things of equal value.

There are three species of beneficent contracts, * *commission* undertaken gratuitously, gratuitous *loan for use*, and gratuitous *custody* of the goods of others.

In undertaking gratuitously to manage the business of others by their commission, if they have prescribed a particular manner of executing it, we are obliged to follow their orders ; or if we depart from them we are liable to compensate what damage thence arises. Where the matter is left to our prudence ; we are deemed bound to use such care as a wise man uses in like matters of his own, nor are we liable for every accident which might possibly have been prevented by the utmost care ; unless we have expressly undertaken for the utmost diligence, or the high nature of the business plainly required it ; or we have obtruded our-

* There are no precise technical words in English to answer the three Latin words *mandatum*, *commodatum*, and *depositum*. And therefore the formal definitions are omitted.

selfes officiously, when others more capable might have been obtained.

We must observe this about all beneficent contracts, that he who intends a favour to others, is not deemed to undertake an higher obligation than he expressly consents to, or than the nature of the business commonly requires: but the person on whom the favour is conferred, out of gratitude should deem himself more strictly bound, and make good all losses occasioned by any the lightest fault of his; that none may have occasion to repent of their intended favours to him.

II. THE gratuitous loan for use where the very same goods are to be restored, binds the borrower to the highest care and to make good all losses occasioned by any negligence of his: (2) nay also to make good such accidents as the goods had escaped had they remained with the lender, except he generously remit his claim: nor (3) can the borrower take any other use than the lender granted: and (4) he ought to restore them in good order at the time agreed, no further impaired than they must be by the use allowed. Nay humanity would oblige to restore them sooner if the owner needs them; or if we need them more and keep them, to make good the loss he sustains by wanting them.

The gratuitous lender is to refund any expences made upon the goods lent, except such as are ordinarily requisite in the use of them; or at least to re-

fund the value of any improvements made upon them as far as they are bettered for his purposes, and so he is enriched. The Civilians distinguish between this contract and a *loan for consumption*, in which the same individual goods are not to be restored, but equal quantities, weights or measures.

III. *DEPOSITING* of goods for gratuitous custody, obliges the keeper to such diligence as a wise man uses in keeping like goods of his own, and to make good any losses by any gross negligence of his. He ought to make no use of them without the owner's consent, and restore them when demanded; except it be for such purposes wherein he might have a right by force to resist the owner. And he justly insists to be indemnified as to all expences wisely employed for preservation of the goods. *

IV. In the *onerous contracts*, or these for valuable consideration, the parties profess or undertake to transfer mutually goods or rights of equal value. And therefore honest men should conceal nothing, or give no false representations about the qualities estimable in such goods, or their defects: and when they inadvertently have departed from equality, according to the judgment of a wise arbiter, he who had less value than he gave, should have something further paid him till the contract be brought to equality; and this he has a perfect right to demand; tho' no courts of jus-

* The translator omits the next paragraph in the original, explaining the *actiones directæ et contrariæ* of the Civilians.

tice could have time to give redress to every little iniquity in such matters.

Mutual donation is not to be reckoned among onerous contracts, as in it there is no regard had to equality between the things mutually given.

From what we said about the grounds of price, 'tis plain that in estimating the values of goods in any place, we are not only to compute the disbursement made in buying, importing, and keeping them safe, with the interest of money thus employed; but also the pains and care of the merchant; the value of which is to be estimated according to the reputable condition in which such men live, and to be added to the other charges upon the goods. This price of the merchant's labour is the foundation of the ordinary profit of merchants. But as goods exported or imported are subject to many accidents, by which they may even perish altogether; this is a natural reason for advancing the price of such goods as are safe. And as merchants are liable to losses when the prices of such goods, as they are well stored with, by any unexpected plenty happen to fall; to make good such casual losses they have a right to take a larger profit, when the goods they are well stocked with happen by any accidental scarcity of them to rise in their prices.

V. THESE are the principal onerous contracts.

1. *Barter* or exchanging goods for goods. 2. *Buying* and *selling*; the simplest form of which is at once

paying the money and receiving the goods. If 'tis agreed that the goods are to be delivered on some future day, the price being previously paid, or such security given for it as the seller accepts; before the day fixed the seller must run the hazard of what accidents befall the goods; but after the day, if the seller was ready then to deliver them, he is only in the case of one with whom they were deposited; as he would have been from the first if he was then ready to deliver them. *

Sometimes men purchase no certain goods but an hazard, or some advantage upon a contingency. In such contracts equality may be preserved if the price is abated below the real value of the advantage in a just proportion to the hazard of our gaining no advantage at all.

VI. IN *location*, or setting to hire, for a certain price we allow one the use of our goods, or our labour. The setter should make the goods fit for use, and uphold them so; and the hirer is bound to use them as discreet men use like goods of their own, and to make good any losses occasioned by any gross negligence of his. If the goods perish without any fault of his, he is no longer liable for the price of the hire than he had the use of them: or if without his fault

* The translator here omits a paragraph explaining some terms of the Roman law not necessary to an English reader. Such as *addictio in diem*, *lex commissoria*, *lex retractus*, *protimēfios*, &c.

they become less fit for use, he may insist on an abatement of the price or rent. But as in lands all the profits of a plentiful year fall to the tenant, so he must bear the casual losses of a less fortunate one. Indeed the rarer cases of extraordinary calamities, such as of wars, inundations, pestilence, seem to be just exceptions; as the tenant cannot be presumed to have subjected himself to rents in such cases. * And in most of contracts the agreements of parties alter the obligations.

One who is hired for a certain piece of work, if he is hindered from it by any accident, has no claim for the hire. But when one hires a person by the year, or for a longer time, the hirer seems bound to bear the loss occasioned by any such short fits of sickness as the most firm constitutions are subject to, nor can he on that account make any deduction from the price agreed upon.

VII. In *loans for consumption*†, we don't expect the same individual goods, but equal quantities by weight or measure. If the loan is not designed as a favour, there's a right to demand *interest*. Nor is it necessary to make interest lawful that the goods lent be naturally fruitful: for tho' money for instance yields no natural increase; yet as by it one may purchase such goods as yield increase; nay by employing it in

* A part also of the following section is omitted for the same reason, about the *locatio operis* and *locatio operae*.

† *Mutuum*.

trade or manufactures may make a much higher gain; 'tis but natural that for such valuable advantages accruing to us by the loan, we should give the owner of the money some price or recompence proportioned to them. The prohibition of all loans for interest would be destructive to any trading nation, tho' in a democracy of farmers, such as that of the Hebrews was, it might have been a very proper prohibition.

The just interest of money is to be determined according to the quantity of wealth employed in trade. Where there's a small quantity of money in a nation, and consequently all goods very cheap, a great profit is made by any small sums employed in trade with foreigners. And therefore a great interest may well be paid. But where much money is employed in trade, a smaller profit is made on each sum thus employed, as the prime cost of goods is high; and therefore a smaller interest can be afforded for it. If civil laws settling interest don't regard these natural causes, they will not have their effect.

The obligations in the contracts of *partnership* are abundantly known by the rules of arithmeticians.

VIII. WE said above that contracts about hazards may maintain the just equality: and some of them are of great use in society, these particularly which insure against shipwreck, robbery, or fire: as by their means many active industrious hands have their stocks preserved to them, which otherwise had perished. These contracts seem of the same effect with a humane and

- salutary partnership among multitudes to share among them any losses which may happen; since 'tis by the premiums paid by those whose goods are safe that the insurers are enabled to make good the losses of the unfortunate.

Nor is there any thing blameable in this that a large number for diversion contribute to purchase any piece of goods, and then cast lots who shall have it: provided none of them expose to such hazards so large a portion of their goods that the loss of it would occasion any distress to themselves or families.

The same may be said of wagering, and of various games in which there's hazard; which are not always blameable on the account of the hazard, or of any inequality. But then there is nothing more unworthy of a good man than, without necessity, to expose to uncertain hazard such a share of his goods, as the loss of it would distress his family; or to be catching at gain from the foolish rashness of others, so as to distress them. All such contracts therefore are to be condemned, unless they are about such trifles as men of wealth can afford to throw away upon their amusements. And besides, 'tis highly unbecoming a good man to give himself up entirely to diversions; or waste much time upon them; or so to inure himself to amusements, as to contract habits of indolence and trifling, making him less fit or inclined for serious business.

As to these more public projects of lottery in which

great multitudes may be concerned; as they bring in no new wealth to a state, and only enrich some few of the citizens by the losses of others; and as men thro' some vain opinions of their own good luck are generally very prone to them; they should be every where under the restraint of laws; lest that wealth, which were it employed in manufactures or commerce would be adding new strength to the state, should be turned into this useless and dishonourable channel, exposed too to innumerable frauds, and an insociable, foolish, and slothful avarice be encouraged among the citizens.

IX. IN confirmation of contracts men often give bail or sureties, and pledges. The bail or surety is bound to make good what is due, in case the principal fails. And as the creditor frequently trusts more to the surety than to the principal, his obligation is equally sacred: nor may he use any evasive arts more than if the debt were wholly his own: nor can he justly even delay the payment; unless he finds a fraudulent collusion between the creditor and the principal to distress him.

The obligation of the surety may be stricter than that of the principal, if he has given either a pledge or an oath for performance; but as he is surety he cannot be bound in a different sum or different goods, or payable at a different time or place, or upon a different foundation. He may justly insist that a suit be first commenced and judgment given against the prin-

cipal; and where more than one are sureties, each one may insist that the loss be divided either equally among them, or in the proportion in which they bound themselves.

Sureties were sometimes given in criminal actions. They may be justly liable to pay the fines. But it would be inhumane to allow them to be subjected to any corporal punishments for the crimes of others.

We formerly touched at the subject of pledges and mortgages. If the things pledged yield increase, this is to be deducted annually from the interest or principal of the debt. The *clause of forfeiture* at the day fixed has no iniquity in it, provided any surplus of value in the pledge be restored to the debtor after the debt is thus discharged. The pledgee is bound to keep the pledge with such diligence as a discreet man keeps like goods of his own, and not answerable for any thing further; as this contract equally regards the utility of both parties. Pledges and mortgages constitute real rights not to be defeated by any prior personal rights.

C H A P. XIV.

* OBLIGATIONS *resembling those from CONTRACTS.*

BESIDE these obligations and rights already mentioned, there are others which arise from some lawful action of the person bound: of such as arise from unlawful actions we treat in the next chapter. These rights arising from lawful actions, arise either from the nature of property, or from some manifest interest of society, and common social laws. The obligations answering to them the Civilians feigned to arise from contracts, that the forms of the actions might be the same. They are quite different from those of *tacit conventions*, as in tacit conventions we truly conclude consent from some action; but in those 'tis plainly feigned, tho' we know there was no consent, as the matter itself is equitable. The obligation by a tacit convention is quite prevented by a previous contrary declaration of the party: but not so in these we now speak of; as they have another just foundation, independent of the consent of the person obliged.

Of these there are two classes, one arising from this, that a person intermeddles without any contract with the goods of others, or such upon which others have a just claim: the other, from a person's taking

* *Obligaciones quasi ex contractu.*

to himself and holding some valuable advantage at the expence and loss of others, who consented not to sustain such loss gratuitously. In the former class is included the obligation of such as possess the goods they know belong to others, to restore the goods with their profits; as also his obligation * who without commission manages any business for an absent person, or for a minor. All these are bound to account, and to restore the goods with their increase and profits.

The like is the obligation of the heir or executor, toward the creditors or legatees of the deceased; and it arises from his entering heir, or undertaking the execution of the will. For 'tis plain, all the effects of the deceased are naturally chargeable with his debts, and with whatever others have a perfect claim to. He therefore who takes possession of the effects, the only fund whence these debts are to be paid, is bound to pay them, as far as the effects go, deducting for himself the necessary expences of management. The heirs or executors however may always claim the benefit of an *inventory*, that they may not be bound further than they find effects of the deceased. Nor need we feign any contracts to explain the just grounds of these obligations, nor that the heir or executor is the same person with the deceased.

II. As to the second class; where a man is bound by deriving to himself some advantage at the expence

* *Negotii utilis gestor.*

of others, who did not consent that it should be gratuitous: under this is included the obligation of those on the other hand whose business was managed by others without commission, and that of minors toward their guardians, to indemnify them, and compensate their labours in all useful services, and to ratify any contracts prudently made for their behoof; and refund any prudent expences in their education.

What parents expend in educating their own children, we conclude from the tender parental affection, that 'tis intended as a donation, when the parent has not declared the contrary. Nay parents are naturally bound to support and educate their children suitably to their condition, and to convey to them at death what remains of their goods. But if a parent is in great straits, or if any child has some other way obtained a plentiful fortune, a parent in these cases may justly charge a child with the whole expence of its support and education, and exact it for his own maintenance in old age, or to support his other children.

III. BUT if one maintains and educates the child of another; there's no presumption here that it was done as a donation; 'tis more presumable that a debt is hereby constituted, to be discharged by the goods or future labours of this child, as far as the expence was truly made for the behoof of the child; but not what was intended for the splendor of his family who maintained it. Nay further, as generally all this ex-

pence upon an indigent orphan would be lost entirely if it died before it were capable of labour; the maintainer might perhaps, in the rigour of justice, be allowed to charge something more on account of this hazard; and by this allowance men will be more encouraged to such necessary care of indigent orphans. But then this hazard continually decreases as the child advances in years, and cannot increase considerably the charge, except for a few of the first years. An indigent orphan thus maintained is therefore in no worse case than that of any indigent person who without any fault of his is involved in a great debt, from whom the creditor may justly demand payment by his labours, while the debtor retains all the other natural rights of mankind, and whensoever either by his labours, (of which, he may justly choose to turn himself to such as may be most beneficial to him, and soonest discharge the debt,) or by the liberality of any friend, he can discharge it, he can no longer be justly detained in service. Now were an account of all the necessary charge of maintenance, and of the value of labour, justly stated, it would appear, that such an orphan found in body and mind could always fully discharge such debt by his labours before he were thirty years of age: and consequently that this can never be a foundation for perpetual hereditary slavery; even allowing an extraordinary interest were charged upon the expences because of the hazard, as is done upon contracts of bottomry in trade. And

yet this charge must appear pretty inhumane upon persons in any grievous distress: nor can any distress be conceived greater than that of an indigent child destitute of all aid from its parents.

Under this branch too is included the obligation of him who using the plea of *necessity*, (of which hereafter) has done damage to others; and of one who received what appeared due, but afterward 'tis found was not due; or what was paid upon a contract against which there lay a just exception making it void; or received any price, in consideration of something which is not paid or performed by him: who are all obliged to indemnify and restore.

When one partner in a company has preserved or improved at his own expence any of the common goods of the company; the obligation of the other partners toward him is of the later class; and his to them of the former.

The obligations contracted for us by others, if they are done by our commission, are manifest contracts; if not, they come under the case of *business managed without commission* already mentioned.

C H A P. XV.

*Of RIGHTS arising from DAMAGE done, and the
RIGHTS of WAR.*

FROM the former principles 'tis plain, that each one is obliged to repair any damages he may have done to others, if they desire it. But cases often happen when a good man justly may, and ought to do, what may occasion some damages to others; if, for instance, some goods of his of incomparably greater value cannot be preserved, or some of the greatest evils threatening him or his friends be prevented, otherwise than by doing what may occasion some small loss to others. He has a perfect right to act thus; and yet he always in such cases becomes liable to make good their losses sustained for his safety or that of persons dear to him. Since this is a sacred social principle of equity, that "no man for his own advantage
" should impair the advantages of others; or if any
" necessity force him to it, that he make good their
" loss as soon as possible."

The same is more manifest in damages done injuriously. Human society cannot be maintained unless men are obliged to compensate all such damages. Laws prohibiting injuries would have no effect, if after they were done, the injurious could enjoy their gain with impunity.

Nay the safety of society further requires that the unjust should be restrained from injuries by the terror of severe punishment; lest the good should be continually exposed as a prey to them. And therefore altho' God and nature require of us good-will, clemency and lenity, even toward the evil, yet surely they require a superior degree of these affections toward the good. And the unjust may be restrained by violence and punishments, and obliged to compensate the injuries done and give security for their innocent behaviour for the future, without any malice or ill-will toward them; nay 'tis doing them rather a good office, to restrain them thus from further crimes.

II. By damage is understood not only "the depriving men of their goods, and spoiling or detaining them injuriously; but any intercepting or preventing their natural or artificial profits; with all those inconveniencies which ensue upon the first wrongs; all gain prevented, as well as losses occasioned."

Whoever by himself or by others, whether by acting or omitting contrary to his duty, has occasioned any damage, which otherwise would not have happened, may be deemed an author of the injury. Such as only rejoice in the injuries done and praise them, may indeed shew such perverseness of temper as deserves punishment; but as it cannot be discerned whether the same injuries might not have been done without such congratulations or applauses, men are not

made liable to compensation on these accounts alone. Where an injury has been done by many in concert, they are bound to compensation jointly and severally. But if one has compensated the whole, the sufferer can demand nothing further on this account from the rest; but he who repaired the whole damage may oblige his partners to bear their shares with him. The case of punishments is quite different; for punishment may be justly inflicted on all for the common safety.

Among the authors of damage, he is deemed the principal, who having authority over others, commanded them to do it. He therefore is first to be called to account, if it can be done; if not, we may demand reparation from the rest; since he could not by any orders of his give them any immunity from this obligation. And tho' the executors may be free from any guilt, having had the plea of necessity, in avoiding the far greater evils threatened them if they had not obeyed orders; yet they are not notwithstanding bound to make compensation: since their innocent neighbours must not suffer, to free them from the evils they were threatened with.

III. If one without any fault, by mere accident does damage to another; he is not strictly bound to repair it. Nay if one engaged in any important services to the community, in any dangerous emergency, where 'tis scarce to be expected that men can use the greatest caution, happens by some negligence to do

damage to his neighbour, it should be rather repaired by the community.

Damage done by hired servants without their master's orders, should be repaired by themselves. What is done by a slave binds the master to divide the price of the slave in the same manner as the effects of a bankrupt are divided among the creditors; computing on one hand the value of the slave, which is the claim of the master, and on the other that of the damage done, which is the claim of the sufferer; and in proportion to these two the price of the slave is to be divided. In the same manner the owner is bound to compensate damage done by his cattle, without any fault or negligence of his. If civil laws * have been more rigid upon the owners, it has been with this view, that the owners may be made more careful in guarding well their slaves and cattle, which are kept for their own behoof.

If one without any malicious design has done damage, he ought to shew himself ready at first to do or perform whatever any wise arbiter shall judge reasonable, and to declare the innocence of his designs. If one has had an evil intention, and truly repents afterwards of it; he ought also to offer compensation, to beg pardon, and give whatever security against future injuries a prudent arbiter shall think sufficient. No man truly repents of any injury he has done, nay

* Exod. xxi. 28, 30. Institutes iv. title 8, 9.

he persists in it, while he declines to do these things, and detains the gain of his injustice. But when the injurious offer all these things voluntarily, we are bound to be reconciled and to pardon them: which all of us should do the more readily and heartily, that each one so often needs to be pardoned, if not by his fellow-creatures, yet by our merciful Creator.

IV. WHEN one obstinately persists in his injuries and won't desist from his designs upon admonition, nor repair damages done; or refuses to perform what we have a perfect right to demand; not only our private interests, but the common interests, and safety of all requires, that the injuries intended should be repelled by violence, and reparation of damage and whatever else is due to us by a perfect claim should be obtained; and even some further evil inflicted on him, by the terror of which both he and others be restrained from the like practices.

This violent defence or prosecution of our rights is war. But as one grand view of constituting civil power was this, as 'tis known to all, that the controversies of citizens should be decided by impartial judges, and thus the mischiefs prevented which might arise from mens redressing themselves under fresh impressions of injuries; very different rules of violent defence or prosecution must obtain according as men are either in natural liberty or under civil government.

Wars are divided into *public* and *private*. The

former are such as are undertaken by a *state*, or in the name of a body of people: *private* wars are those among private persons. The public wars are divided into the *solemn*, or these authorized on both sides by the supreme powers of states, upon some specious shews of right; and those so authorized only on one side: such as the wars made upon bands of pirates or robbers, or citizens making insurrections; or what are called *civil wars*, between different parties in the same state contending about some rights of the people, or of the government.

We first treat of the *private wars* of men in natural liberty. And the same reasonings hold in *public wars*; since sovereign states and princes are with respect to each other in the same condition of natural liberty.

V. We have already shewn that wars both public and private are sometimes lawful, nay necessary for the common safety. Nor do the scriptures prohibit them in all cases: as they plainly authorize civil power, give to magistrates the * *power of the sword*, and praise some eminent heroes in war.

In both kinds of war three points are to be settled: the *just causes*, the *term of commencing*, and the *term of ending them*, or the sum of our demands in war.

* The *jus gladii* is well known to include both the power of capital punishment, and of defending a country by arms, among the Romans to whom the Apostle writes, Ch. xiii. 4. See also Hebr. xi. 32, 33, 34. 1 Pet. ii. 13, 14.

When we speak of these three in the wars of particular persons, they are to be differently determined according as the parties live in natural liberty or under civil government.

But we must always remember, that tho' we have received the very greatest injuries from any person, yet we ought to maintain good-will toward him, and even desire his happiness, as far as it is consistent with that of better men and of the community. All clemency consistent with these ends, toward even the most injurious, is what every man's heart must approve. When therefore any injury is designed or done to us, we should try first all gentler methods, either to prevent it, or obtain reparation of damage and security for the future. Nor should we judge that an unjust enemy has forfeited all his rights, or that every outrage against him is justifiable. That violence alone is just which is necessary, or naturally conducive, to repel the injury, repair the damage, or obtain security for the future. Any cruelty not requisite for these ends is plainly criminal and detestable; as it occasions grievous sufferings to some of our fellows, without any necessity for the interests of others; and is a precedent to like cruelties on other occasions, even toward those who have a just cause in war.

VI. *THE just causes* of beginning war in natural liberty are any violation of a perfect right. There could be no security in life, none of our rights could

be safe, were we prohibited all violent efforts against the injurious, and they allowed to pass with impunity. By a frequent repetition of even smaller injuries the greatest wealth must soon be exhausted: and life must become intolerable to innocent men if they are thus exposed to the perpetual insults of their petulant or insolent neighbours. Humanity may often persuade a good man to overlook lighter injuries, which can easily be repaired; if especially, they proceeded from some sudden gust of passion in men who in the main parts of their character are good, and will soon repent of it. Yet no man can justly claim such patience toward himself from others. There are some more rare cases in which perhaps it may be just to make war before any injury is done or attempted: but of these hereafter. *

When therefore any of our perfect rights are violated, either by destroying or damaging our goods, or refusing what we have a perfect right to claim; or when a like injury is done to any innocent neighbour; 'tis lawful, nay often honourable by force to compell those who oppose us or our neighbour in obtaining our rights, to desist from these injuries, and to perform whatever is due to us. We may seize the particular goods we have a claim upon; or if we cannot find them, seize any goods of the enemy sufficient to compensate all that's due to us. And in computing this,

* Book III. ix. 2.

we should include all our labours, and losses or expences occasioned by the injury. Nay we may proceed further by way of punishment, or obtaining security for the future, as far as a wise arbiter will judge necessary: [but of this presently.]

In civil society indeed, these injuries alone justify the violence of private persons against any fellow subject who is amenable to laws, which may occasion an irreparable damage. The warding off, or the repairing of others should be obtained in a more prudent way by the aid of the magistrate. But such as can neither be prevented nor remedied this way, we justly may repell with violence. But if any one, who is as to right a citizen or subject, renounces this bond; or makes his attempts so secretly that there's small hope of bringing him to justice; we have the same rights against him as if we were in natural liberty.* Such are all robbers and thieves in the night. Against other citizens our remedy must be obtained from judges or magistrates.

VII. THE term of commencing violence in liberty, is when one either by express declaration or any hostile action has discovered a fixed purpose of hurting us or any innocent neighbour; and won't desist upon admonition. We are not obliged to receive the first assault; as it may perhaps prove fatal to us: nor need we wait till the injury is executed; which may

* Exod. xxii. 2, 3. and some fragments of the 12 tables.

perhaps prove irreparable: and 'tis generally easier to prevent than to remedy. We may therefore justly prevent and surprize such as have formed and declared sufficiently their injurious designs of hostility.

The proper term of commencing in civil life any violence that may be dangerous to others, is when the aggressor has brought us into such straits that we can neither retire without danger, nor obtain any aids from magistrates or our fellow-citizens.

VIII. THE term or bounds beyond which we ought not to continue violence in natural liberty, are when the aggressor or the author of the injury either voluntarily repenting, or compelled by force, desists from injuring, and offers compensation of all damages done, and such security for the future as any prudent arbitrator shall judge necessary. If he obstinately refuses these things, we may justly obtain them by force. Nay the common interest of mankind requires that such as without any plausible shew of right, have done gross injuries, and given such dangerous example to others, should be punished in such a severe manner as may probably deter not only themselves, but all others from like crimes.

The same reasons which justify the inflicting of punishments in civil life, justify it also in natural liberty; tho' in this state we cannot expect that punishments shall be so effectually executed, or so prudently regulated. Neither the grounds of punishments, nor the reasons of inflicting them, presuppose civil power

in the inflictor, nor civil subjection in the sufferer.

Under civil government subjects ought not to continue violence after they are secured from present danger. The reparation of injuries and precautions for the future are to be obtained by the sentence of a judge, and not by the violence of the enraged parties. All just violence should be with a view either to the defence of our rights, or to some public advantage. What has not such intention; and is accompanied with hatred of the person, and joy in his misery, is that criminal *revenge*, which is condemned both by the natural and christian laws.

And further as rights respect not only our holding or possessing, but also our obtaining sometimes from others some goods or services: in natural liberty we may use violence in pursuit of what is due to us from others, when they refuse to perform voluntarily what we justly demand. But in civil life all such prosecution of our rights should be made by actions in law, either for debts, reparation of damages, or precautions against damages apprehended; and these matters decided by the wisdom of magistrates and judges: as must appear from what was said about the causes of war in natural liberty, and the ends of civil government.

IX. FROM these principles it must follow that such duels as are often practised among us, where the challenger and the person challenged meet in a place appointed, intending the death of each other, or what

may occasion death, cannot be justified either in natural liberty or civil society. Reason would always teach a far better method of defending and prosecuting our rights; first, by committing any disputed point to arbiters in natural liberty; and if either side declined to submit to them, the other should obtain the assistance of such neighbours as the equity of his cause or regard to the common safety can engage to his side, and make open war in prosecution of his right. As to any reproaches or contumelies; the duel is often a foolish, and often too cruel a method of refuting them. The fortune of the combat is often as blind and capricious as any: and death is too grievous a punishment for opprobrious words. If one has hurt the character of others, either by false reports, or even by divulging inhumanly, without any necessity, their secret vices; in natural liberty we may justly, with the assistance of friendly neighbours, inflict such public punishment as any wise arbitrators shall deem proper for the crime. And if in this state any one has given full evidence of an hostile intention to destroy us; we should rather take the safest way to prevent by surprize, or to restrain him, in such manner as our own and the common safety requires. Nay under civil government, we are not bound to avoid public places, or neglect any business which requires our appearing abroad, because we know that one designs to assault us; unless either humanity or a regard to our safety move us to it. And if we are unjustly attacked while we are

employed in our own lawful business, we may justly defend ourselves even by killing the aggressor: and doing so is often a very useful service to mankind. All this may be done without any concerted duels.

But if the legislator has been so negligent of a most important matter, as to appoint no suitable legal redress for the citizens when injured in their characters by calumnies or reproaches; and if that custom prevails, which took its rise in the most barbarous and superstitious ages, that a man is deemed infamous, and always exposed to new insults, and these generally approved too, if upon certain reproaches or contumelies uttered against him, he does not challenge the author of them; which will be the case too with one who declines to accept a challenge from any who imagine they are injured by him. The larger share of this guilt is chargeable on the civil governors themselves; tho' the parties are not excusable, especially the challenger. For a good man may generally find a better way of vindicating his character, and even of shewing his fortitude, if either there arise any public wars, or if he is first attacked by violence.

There is indeed one case in which concerted duels may be lawful on one side: * if a public enemy of our country, of superior power, trusting to the valour of some champion on his side, offers to grant us reasonable terms of peace only upon the event of this cham-

* Grotius De Jure B. &c. iii. 20. 43.

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pion's being defeated by one of our side; or will have the controversy decided according to the fate of such a combat. 'Tis no doubt foolish and inhuman to decide controversies this way, when it might be done by arbitration. But if a more potent enemy will not consent to any other way; 'tis a glorious action on our side, if one to prevent much blood-shed exposes himself for his country to this hazard, in which his country has better hopes of success than any other way.

VOL. II.

F

C H A P. XVI.

EXTRAORDINARY RIGHTS IN CASES OF NECESSITY, *and the* COMMON RIGHTS OF MANKIND.

IT has been already frequently shewn that an immediate sense generally points out and recommends our several duties; and that there are different degrees of them, in a certain subordination, some more, some less honourable; that the later should give place to the former, when they are inconsistent; and that the supreme beauty appeared in these affections of soul which are most extensive, which should therefore controul the narrower: and that in consequence of this, all the rights of individuals, and all the special rules of life should be postponed to the universal interest of all. Altho' therefore these practical conclusions called the *special laws* of nature, which we are sacredly bound in all ordinary cases to observe, point out what is almost continually the virtuous part; yet by an extraordinary change of circumstances, it may become our duty to act in a different manner; and such singular cases are to be deemed excepted in these special laws. We never should speak thus, that in cases of singular necessity, we may justly violate the law of nature, or act unjustly or vitiously: such expressions are contradictions. But it is truly obeying the law to take the benefit of any exceptions appointed

ed in it; or to follow the more sacred law when it derogates any thing from one of less importance. Now of all the social laws that is the most sacred, which prefers the general interest and safety to that of individuals or small parties.

II. BUT as the sense of every good man must shew it to be of high importance to preserve the authority of all the special laws, and that they should be religiously regarded; we cannot be justified in departing from their appointment upon any light causes: the necessity must be great and manifest which will justify it. We must not only consider cautiously what present advantages may ensue in this case from such a singular step; or what present inconveniencies from following the ordinary law; but much more what greater and heavier and more general evils may follow from such a liberty allowed to all. Let us take an example or two, which may illustrate other cases. As the maintaining of veracity and faith in our conversation and dealings is of the highest importance to society; as is also the maintaining the rights of property, and leaving to each one the free administration of his own, for the mutual confidence and security of men in society: the causes must be of the highest nature, some terrible evils to be avoided or exceeding great advantages to be obtained which can be allowed to make exceptions from these important rules. Nor ought this plea of necessity to be extended to lighter matters: for we should consider all the consequences,

even of a remoter kind which must ensue upon diminishing the deep reverence men should have for these laws. No cases therefore but those of the highest nature are to be deemed excepted; when evils superior to all these evil consequences are to be averted: and none will reckon among these, any ordinary ones of a lighter nature, unless he is plainly wicked and impious, void of any conscience of duty.

'Tis to no purpose to argue here, that we are to do nothing vitious for any prospects of advantage. In this all agree. But the question is, whether such extraordinary conduct be vitious in these circumstances, or not? It should not be matter of hesitation, whether we may abandon the conscientious part for the advantageous: but whether some great utility to ensue don't make some extraordinary steps lawful or honourable? Nor is it more to the purpose to allege, that we should always adhere to the divine laws, and that we are no judges of future events, but should commit them to Providence. Such things are pleaded by some very good men, tho' not very acutely in this point. For the very question is, are not these cases to be deemed exceptions in the divine laws? and made known to us by the same use of reason by which the law itself is made known? If we are no competent judges of future tendencies, we are no judges about the ordinary natural laws; which are no otherwise discovered than by our reasoning upon the tendencies of certain methods of action, as they appear conducive

to the public interest or detrimental: for no man can allege that our sole rule of life are the impulses of each particular passion which we may generally approve in ordinary cases.

No doubt wicked selfish men devoted wholly to their own interests or pleasures will abuse this plea; but not without such impiety and unfairness of mind as would break through any bonds of laws. The passionate and revengeful often abuse the doctrine of self-defence, and that about prosecuting the injurious: but we don't therefore quit this doctrine, and prohibit all violence in defence or prosecution of our rights. Nor should we any more condemn all departure in singular cases from what the special laws of nature require in ordinary ones. Men seem agreed that the common rules of property yield to some singular exigencies. One may use or destroy the goods of another without his consent, when 'tis necessary for the preservation of multitudes, as in the lightening of ships in a storm, or blowing up of a house to stop a raging fire. Nay some higher laws give way to singular necessities. The bravest and best citizens are exposed to certain death for their country, in services where there can be no hopes of their escaping. By drawing a bridge or shutting the gates, by which all the citizens have a right to be protected, the bravest men are sometimes exposed to the most cruel enemies. Tullus Hostilius is renowned to all ages for presence of mind in delivering a false account, by which the Ro-

man people were preserved. But this doctrine so liable to misapplication needs always the following cautions.

III. FIRST of all: the two general laws about loving God and our neighbour, or of promoting the general good of all, admit of no exceptions: nay in this later are founded all the exceptions which lye against any of the more special laws. But the external acts of worship are not necessarily annexed to any one time, and therefore yield to urgent exigencies.

2. The more honourable any person's temper is, the less apt will he be to allow to himself exceptions for any smaller interest of his own, or to claim any privileges of necessity.

3 We must bring into account all the effects probably to ensue from any extraordinary steps, whether by natural consequence, or from the unfairness or rashness of others. Not that men are to be excluded from every right which unjust persons may make a pretence of in improper cases: but even these bad consequences are to come into the general account, to prevent our allowing exceptions in any but the most weighty cases. So that no man can plead exceptions in lighter ones, without that depravity of mind which would break any acknowledged law, without any such pretence.

4. The more sacred and important any law is, the greater must the causes be which can found any exception.

5. Causes of a public nature are far more honourable than those of a man's own advantage. A good man often may quit part of his own right; and 'tis often honourable not to take the advantages he might. But he is not thus master of the public interests, and must act according to what the exigence of the times require.

6. No plea of necessity will justify a man in freeing himself from any threatening evil, by casting the like or greater upon any innocent person. This is plainly not subservient to any public utility.

7. Whatever smaller damages we cast on others who do not consent to suffer them gratuitously, in order to free ourselves from any great danger, we are sacredly bound to repair. To this right in natural liberty, of warding off some great danger by actions detrimental to others, there corresponds in civil society an *eminent right in the supreme powers*, of which hereafter. *

IV. FROM the common bond of all with all, by which all mankind are constituted by nature one great society, with some common laws binding them, there arise certain common rights, not specially regarding the utility of any one, or a few, but that of all in general; which therefore every one as he has opportunity should maintain and prosecute. These rights as they obtain also in natural liberty, should be consider-

* Book III. Ch. v. 4.

ed previously to those of civil societies. We shall give a few instances, which will also lead us to others.

1. Mankind as a body, and each one as he has occasion, have a right to hinder any one to quit life without a just cause, or thus desert the duties incumbent on him. Suicide should therefore be prevented, or such self-maiming as may make one unfit for the duties of life.

2. There's also a common right of all, to prevent certain vitious practices of most pernicious example, which yet cannot be said to injure any one person more than another: such as monstrous lusts, procuring abortion, or any other practices which are hurtful to mankind in general.

3. We are likewise to hinder any man to destroy such goods of his own as may be very useful in life, out of any caprice or ill-nature: nay they should not be allowed to perish of themselves without being used.

4. There's also a like common right of one and all, to prevent injuries, and to punish such as are done; so that by the terror of the punishment, others also may be restrained from like attempts.

5. Mankind have a right also to compell any person, who has discovered any secret of great use in life, to divulge it upon reasonable compensations, and not suffer it to perish with himself; that such as need it may also enjoy the benefit.

6. Mankind in general, and every society, may justly require it of all such as enjoy ordinary health

and strength, unless they otherwise have a fund for their support, that they should maintain themselves by their own labour, and not intercept the liberality or charity of good men; which is due only to the weak who cannot support themselves. Such slothful wretches are to be compelled to labour.

The instances we have given are rights of the perfect kind belonging to mankind as a body. Imperfect rights of this class answer to the general duties of humanity and beneficence (above explained in treating of the nature of virtue) which must be left free to the honour and conscience of men.

C H A P. XVII.

*How RIGHTS and OBLIGATIONS cease : how CON-
TROVERSIES are to be decided in NATURAL LI-
BERTY : and the RULES of INTERPRETATION.*

OBLIGATIONS cease by three several ways : by the *paying or performing* what was due ; by *remission* in favour of the debtor ; and by the *failing of the condition*.

Payment may be made either by the debtor himself, or any commissioned by him, or acting in his name and for his behoof ; but it must be at the time and place agreed on. Where payment is offered not by appointment of the debtor, nor for his behoof ; the creditor is not bound to transfer his right against the debtor to the person thus offering payment, who may have some malicious intention against the debtor. What is here said relates only to the delivery of common goods or money, or performing common labours or services, in which 'tis no matter to the creditor who pays him. The case is otherwise in homages of honour, or such labours as are valued on account of singular ingenuity. In these no substitution can be made without the consent of the person to whom they are due.

In money, or goods only regarded by weights, measures, or quantities ; if two persons be mutually

indebted to each other in equal sums, and the days of payment on both sides come, the debts mutually destroy each other: and this is peculiarly called *compensation*. Nay tho' the sums are not equal, yet the debts should be deemed abolished as far as the sums concur, and the surplus only to remain due.

To the second way, to wit, of some remission; are reducible all these *transactions* or bargains agreed to for extinguishing disputed claims: as also *delegations*, by which the debtor with consent of the creditor transfers to him an equivalent debt due to himself: as also the forgiving of debts and accepting any thing in lieu of them; and lastly mutual dissent of the parties, by which the mutual obligations of a bargain are taken away.

3. Under the head of the failure of the condition, is included the *perfidy* of one party in a bargain; which sets the other free, if he chooses it, rather than to compell the perfidious to performance: as also a *change of state*; by which all obligations are made void which were plainly founded upon it: as also the *expiration of the time*; which takes away obligations which were to endure no longer: and lastly *death* takes away such as only respected the persons, and were not designed to subsist to the heirs of the creditor, or affect the heirs of the debtor: and these points are generally known from the nature of the business, or the terms of the contract.

II. In natural liberty controversies are best decid-

ed by friendly conferences of the parties, or the interposal of common friends; or by an absolute *compromise* or submission to arbiters of approved characters; and this either as to the strict point of right, or as to the equitable and humane part on both sides. Every good man would always choose to make submissions of this later sort, and not insist upon the strictest point of right.

The proper arbiters are persons of wisdom, under no special attachment to either side, and who can gain nothing by the decision of the cause in favour of either party. Such men influenced by no interest or passion, tho' they be neither wiser nor better men than the parties contending, yet will more easily discern what is just and equitable. The parties are bound to stand to their decision, unless they find evidence of corruption, such as some secret contract with one party; or unless there be such manifest iniquity in the decision as must plainly evidence some fraud or unfairness. But if it is only some smaller inequality or mistake in the decision, upon some shew of right, by which one party thinks he is wronged, he is notwithstanding bound to submit to the award.

The arbiters should proceed as judges do, to find out the truth by the acknowledgements of the parties, or by signed deeds, or other such documents: and next to cite witnesses, and interrogate them upon oath; regarding always this, whether the witnesses be not engaged by interest on one side; and they

should demand two at least to proceed upon. For tho' the credibility does not at all increase in proportion to the numbers of witnesses, and sometimes the testimony of one wise honest man gives full satisfaction; yet it would be dangerous to proceed upon the testimony of one: as a person of great hypocrisy and art and presence of mind may contrive such a consistent story, that no interrogatories put to him can detect the falshood of it, or make him contradict himself. But when two or more witnesses, are separately examined, without hearing each others testimonies, about all such circumstances as might have been observed by persons really present, (of which a vast multitude may occur to a sagacious judge;) if they either frequently contradict each other; or both always remember the same circumstances, and both always pretend to have forgot or overlooked the same circumstances, they give plain evidence of a concerted fraud. [A complete consistency therefore of two thus examined, gives abundant evidence.]

III. FOR discovering the true intent and meaning of promises, contracts, testaments, and written laws, the proper rules of interpretation are often useful. But they belong rather to the art of criticism than to morals; as they are not peculiar to these matters.

1. We must still remember that such as profess to contract with others, and use such signs as commonly express contracting, are to be deemed bound,

whatever way their mind was then employed: nor otherwise could there be any faith in commerce.

2. The sense of common *popular words* is to be determined by custom, without regard to original meanings or etymologies; unless there appears evidence that they were taken in an unusual sense.

3. *Terms of art* are to be understood according to the definitions of the artists.

4. Where the different parts of any deed relate to the same thing; the ambiguous or obscure are to be cleared up by the more plain and distinct.

5. If words taken in their simple and unfigured sense import something contradictory and absurd, but not when interpreted as figurative; they are to be deemed figurative.

6. In deeds which convey no right in their prior parts to such as don't also consent to the subsequent; the subsequent limit the preceeding. This holds in the different parts of testaments, and in different deeds made between the same parties.

7. There are also just conjectures of interpretation to be derived from the *subject-matter*, the *circumstances*, *effects*, or *consequents*. For that is probably the true interpretation which suits the subject-matter and circumstances, or which involves no absurd consequences.

8. Contracts are best explained from knowing the views of the parties; and laws in like manner from the reason or design of them.

9. We are also to regard whether the matter be of a *desirable* or favourable nature, or on the contrary undesirable or odious; for accordingly we give a larger or more confined sense to the words.

IV. BUT where all or any of the contending parties in natural liberty, trusting to their own strength, and each dreading the interest or art of his adversaries in influencing any arbiters they might choose, declines to compromise; there remains no other remedy than that each defender prosecute his right by violence, with what aid he can get from his neighbours: and by this means multitudes must often be involved in great inconveniencies and dangers. Now 'tis probable, that in order to avoid these mischiefs, and to get large societies regulated by the authority of a few of the wiser sort, in the decision of their debates, and the exerting their united force for the common safety of all, men have had recourse to a political union and a civil power.

THE
ELEMENTS
OF
MORAL PHILOSOPHY.

BOOK III.

THE PRINCIPLES OF OECONOMICKS AND
POLITICKS.

CHAP. I.

CONCERNING MARRIAGE.

WE have in the former book treated of the rights and obligations of that *state of liberty constituted by nature*. We proceed to the *adventitious states*, founded upon some human deed or institution.

These states are either *domestic*, regarding the utility of a few, so many only as can subsist in one family; or *public*, respecting the utility of a whole nation or state, or even of many states.

Oeconomics treat of the rights and obligations in a family; the chief points of which are delivered in these first three chapters. There are many other adventitious states of persons united in some narrower communities or corporations included within some political body, and subject to it; of which there are innumerable multitudes, which are not under the cognifance of philosophy.

II. ALL kinds of terrestrial animals must have subsisted only for one age, if nature had not consulted their preservation by a difference of sex, a desire of offspring, and a tender care of it till it can subsist by itself. In the brute animals nature has done little more; as their young can be sufficiently preserved and reared by the care of their dams, since they need scarce any instruction for their simple ways of life. Nature finds all the clothing and armour they need; and the earth of itself sends up their food in abundance. But for the improvement and even preservation of human life a multitude of arts and inventions are necessary; as their bodies are more delicate, needing nicer food, and clothing, and other care; and their minds capable of many delightful arts. Their offspring therefore, by the wise order of nature, continues far longer tender and infirm, needing the constant care of the adult; that thus they may be more easily governed and instructed in the various arts of life, before they acquire untractable strength.

Now as the mothers are quite insufficient alone for

this necessary and laborious task, which nature also has plainly enjoined on both the parents by implanting in both that strong parental affection; both parents are bound to concur in it, with joint labour, and united cares for a great share of their lives: and this can never be tolerable to them unless they are previously united in love and stable friendship: as new children also must be coming into life, prolonging this joint charge. To engage mankind more chearfully in this laborious service nature has implanted vehement affections between the sexes; excited not so much by views of brutal pleasure, as by some appearances of virtues, displayed in their behaviour, and even by their very form and countenances. These strong impulses plainly shew it to be the intention of nature that human offspring should be propagated only by parents first united in stable friendship, and in a firm covenant about perpetual cohabitation and joint care of their common children. For all true friendship aims at perpetuity: there's no friendship in a bond only for a fixed term of years, or in one depending upon certain events which the utmost fidelity of the parties cannot insure.

III. **THIS** natural love of the sexes, and equally natural love of offspring, shew that Plato and some other excellent writers are justly censurable, for departing too audaciously from nature, in appointing their states to be supplied in new subjects by children unknown to both the parents; and this in order to pre-

vent some evils * which may be prevented in a much more easy and gentle manner. For never could any laws or institutions have such influence, that persons quite uncertain about their offspring, and hence not influenced by the natural affection, would take a proper care of the young. Or if they were compelled effectually, the labour would be most disagreeable to them, which to parents assured of their own offspring is light and delightful. And further while their offspring is unknown, men want one of the strongest incitements to all diligence and industry. Nay further Plato's scheme, without any sufficient reason or criterion that one can understand, is only calculated for the happiness of the few finer spirits; while the plurality are subjected to a miserable slavery.

Nay further; these inconveniencies he dreads so much from each one's knowing his own children, might be prevented another way, by proper laws and public institutions about education, testaments, and successions. Nor can we ascribe the factions which often tear states to pieces to our knowing the ties of blood; as one may easily see in all nations. He should

* See Plato's scheme in his books *De Republica*. The evils avoided by his scheme, are avarice, and injustice; vast estates, and the attendant power and influence, descending to worthless heirs; the employing mens affections upon the contracted system of a family or two, which otherwise might be extended to the whole state: and thence many dissensions and factions.

also have prevented all particular friendships ; or shewn that men have much superior sagacity in the choice of friends or of state-parties, than he allows them about the education of children, or the love of kinsmen, or in making their testaments.

As to the apprehension of danger from this, that many very weak men by means of the tender parental affections come into great wealth, 'tis without ground. The offspring of the weak is frequently very vigorous ; and that of the vigorous weak, both in mind and body. Nor is it necessary for any state that all its members should be either robust or ingenious. And sometimes the finest genius is lodged in an infirm body.

IV. We must not therefore through fear of a few inconveniencies counteract what nature has so strongly recommended : but rather look upon all such deductions of reason, as shew how a faithful friendship may be maintained in wedlock, for the proper education of offspring, as so many sacred laws of nature. Men ought to restrain not only all monstrous lusts, as outrages against God and nature, but also all dissolute procreation without any proper covenant about a friendly society for life. For if such indulgence were allowed to all, it must destroy both the bodies and minds of the youth, produce a race destitute of all paternal assistance, and expose the incautious mothers to infamy, poverty and a perpetual course of debauchery, without any hopes of ever attaining any reputable state in life. It were to be wished that an equal infamy at

tended the other sex, the common authors of or solicitors to such vices.

Such adult persons as have a sufficient stock both of wealth to support a family in their condition of life, and of prudence to govern it, seem obliged to marry, unless they are hindered by some important offices inconsistent with the cares of a family. It would be dishonourable for one without a weighty cause to decline his share of the cares and services requisite for the preservation of the human race.

V. THE chief articles in this covenant are these.

1. "That the woman be faithful to the man in co-
"habiting with no other;" as it must be the greatest injury to impose upon him an adulterous offspring, for heirs to his fortune, and objects of that affection which is naturally due only to his own.

2. The second is, "that the husband should be
"equally faithful to the wife." For it is a natural iniquity that the wife's conjugal affection, and all her cares and fortune, should be devoted to one man and his offspring; while the affections of the husband are allowed to be intercepted by, or dispersed among several women and their children, and along with it his fortune.

Simultaneous polygamy is not to be allowed to men, not only on account of the inequality or iniquity now mentioned, but because it also destroys all friendship in marriage; must be the cause of perpetual contentions; must tempt women so injuriously treated into

adulteries; must corrupt the minds of men with wandering lust, destroying their natural affection to their children; and must occasion to some an offspring too numerous, which therefore will be neglected, and be void of all sense of duty to such dissolute parents. And further since Providence preserves the numbers of males at least equal to that of females, if 'tis allowed to men to have more wives at once, many must be excluded altogether from marriage or having offspring; and thus be free from these tender bonds which chiefly civilize and unite men in society: nor does polygamy contribute to make nations more populous, but has rather the contrary effect.

3. The third article is, that persons married should by a perpetual union of interests and pursuits, consult the prosperity of their family, and chiefly the right education of their common children, and the improving their condition as they have opportunity.

That we may be the better fitted for observing these articles, from our infancy we should be inured to modesty and chastity; an high sense of which is deeply fixed by nature in the finest spirits. All obscenity and lasciviousness in discourse or behaviour is detestable; as it relaxes these bonds of modesty by which the young, and women especially, are restrained from exposing themselves to all infamy and misery.

4. The fourth article is, "that the bond be perpetual, to end only by death." This is necessary to make marriage a state of friendship; as also generally

for the right education of children, who are successively born to us for a considerable part of life; and this lasting duty or charge is imposed by nature equally on both parents. It would also be most inhumane to divorce or separate from a faithful and affectionate consort for any causes which include no moral turpitude; such as barrenness, or infirmity of body; or any mournful accident which no mortal could prevent, and which must be equally afflicting to the person abandoned, the death of all the common children.

As to any proper power, or right of commanding, vested in either of the parties, it seems opposite to that tender affection the spring of marriage; which rather points out an equal friendly society. Nor seems there any other reason for giving any superiority to the husbands, except this, that men are generally more fit for managing the more important business of the family, to which the less important within doors should give place.

The four articles above-mentioned seem so necessary, that no covenants of the parties in opposition to them can be valid*. Marriage therefore may be

* If any one in this matter insists that simultaneous polygamy was allowed in some civilized nations; let him remember that so were also human sacrifices, and a certain sort of slavery manifestly iniquitous and inhuman, in far more civilized nations. And tho' a plurality of wives was allowed by the Jewish law; yet a far purer institution informs us, that it was permitted for *the hardness of their hearts*; or only

defined "a covenant between a man and woman about
"perpetual faithful cohabitation and joint care of their
"common offspring."

VI. THE *impediments* of marriage are either such
as are deemed to make the contract from the first
void; or, afterwards make void a valid contract. Of
the former class some are natural and some moral.

Among the natural impediments, beside a manifest
bodily weakness rendering one unfit for marriage, may
be reckoned also some grievous disorders and miser-
able incurable diseases, inconsistent with a friendly so-
ciety, or excluding all hopes of offspring that can live.
Such as idiotism, and perpetual madness, leprosy, and
some other diseases. Very advanced years of either
side may justly be deemed to make void a marriage
with one in the bloom of life. But if a couple both
well advanced in years, covenant about a constant co-
habitation, there's nothing blameable in it. A third
impediment is, when either party is so young that they
cannot have attained that use of reason which is ne-
cessary to their binding themselves by any contract.
For it would be most absurd that persons who because
of their immature years are deemed incapable of bind-
ing themselves in any other matter, yet should be

allowed to pass with impunity, but not approved. The *con-
cubinage* both in Heathen Rome and under the Christian Em-
perors was allowed only to such as had no wives, and was a
marriage naturally lawful. See *Heineccius' Antiquities*, in the
appendix to lib. i. c. 38. and the following ones.

deemed capable of it in this, which is far more important than any other, and requires greater judgment.

The moral impediments which make void the contract from the first are *prior contracts* with others, and *too near consanguinity or affinity*.

As to the former: if two persons both apprized of the prior contract with another join in marriage, the marriage should be deemed entirely void; and both parties should be severely punished. Where one of the parties was not apprized of the contract; the case of this person is so favourable, that the marriage confirmed by cohabitation should not be made void unless at the desire of this person: even as in other contracts, subsequent real rights take place against prior personal ones: but the guilty party deserves severe punishment. And that there may be no room for such frauds even after complete marriages, every state should take care that all marriages intended should be previously advertised and such as are celebrated also be divulged in the most public manner.

As to *consanguinity* invalidating marriages, there are higher debates. Among parents and children in the *direct line*, the law of nature seems to prohibit all marriages; not only on account of a considerable difference of years, but because the conjugal affection and intimacy seems quite inconsistent with that reverence implanted by nature toward parents and confirmed by education. As to the inter-marriages of kin-

dred in the *transverse line*, or collaterals, the natural reasons offered by ingenious men don't seem conclusive to prove such marriages pernicious or impious. But as we find that many nations who derived nothing from the * Jewish laws, held the same marriages of collaterals incestuous and impure; 'tis not improbable that they have been prohibited by some positive divine law in the earlier ages of the world; and that some vestiges of this law was preserved in many nations. The intention of this law has probably been to diffuse further among many families that good-will and endearment which frequently arises from consanguinity and affinity. The Deity may also have had in view some other advantages to human offspring to arise from such intermixtures of different families.

By the Roman law, and the customs of all Christians, marriage is prohibited to all within the *fourth degree*. And the degrees are thus computed. Persons a-kin have had some common parent: and as many generations as have intervened on both sides from this stock, so many are the degrees. In like manner a man is prohibited to marry any such kinswoman of his former wife, as of his own; to wit, within the fourth degree. The canon law retaining the same words, has yet extended the prohibitions much further; as it computes the degrees according to the generations in one of the lines only; and by the long-

* See Levit. xviii. and Tacitus's Annals. 12. 5. Digest. 33. 2. 1. 17. and last, and Lib. 39. 1. 53. and Grotius, ii. 5. 12.

er of the two, if they are unequal: and this prohibits all marriages within the seventh degree of the civil law.

VII. THE causes which break off a valid marriage are, any violation of the essential articles: such as adultery, obstinate desertion, capital enmity or hatred, and such gross outrages as take away all hopes of any friendly society for the future. When a marriage is dissolved for such causes, the guilty party and the associate in the crime deserve the highest punishments; as these injuries in marriage do greater mischief, and cause deeper distress than stealing or robbery, for which capital punishments are inflicted. The innocent party should be allowed to marry again: for it would be strangely inhumane because one has suffered injury, that the law should inflict another hardship, by depriving them of a new marriage and offspring. Nay if the guilty parties are allowed to live, they should not be hindered from marrying, except it be with the partners of their guilt. They should rather be obliged to marry persons equally infamous with themselves.

The prohibitions in the gospel of all divorces except in the case of adultery * seem *elliptical*, as those which prohibit all use of oaths. They only condemn all the causes assigned by the Jewish doctors, except that one. The apostle Paul † expressly allows an-

* Matth. v. 32. Luke xvi. 18. † 1 Corinth, vii. 15.

other, and that for manifest reason, to wit, obstinate desertion.

The duties of persons married consist chiefly in a faithful and constant affection, sweetness of manners, and prudent care of their families; and to this purpose 'tis necessary they improve their minds in all virtue; especially in meekness and calmness of temper; that they may restrain such passions as their family-affairs will be apt to excite. Without these virtues a continual society and community of all things can never be tolerable. As to the ways of improving their fortunes, this they must learn from other arts, and not from philosophy.

C H A P. II.

The DUTIES of PARENTS and CHILDREN.

AS human offspring remains for a long time infirm, incapable of preserving itself, needing the constant care of others, both for preservation and instruction in these arts and manners which are necessary for life; nature has plainly imposed this charge upon the parents by that singular affection implanted in them. Nature therefore must have designed that parents should assume all the power which is requisite for the discharge of this trust, and subjected children to it; while at the same time by this tender affection sufficient precaution is taken for the childrens obtaining their liberty as soon as they can safely enjoy it; since without it they cannot be happy, which is the point that parents are most solicitous about.

The want of judgment in our immature years, and the tender parental affection, the two only foundations of parental power, shew that it cannot be perpetual or during life; but must expire as soon as children grow up to mature strength of body and mind. And yet the parental affection will always remain, exciting parents to all kind offices, when their children need their assistance or counsel.

The same considerations shew that this power can-

not be extended to any of the more grievous punishments, such as cannot be requisite for education in such tender years: much less can it extend to life or liberty. A parent has no right to sell his child to perpetual slavery, or to lay any burden upon it beyond the value of the necessary and prudent expences of its education.

II. THIS parental power belongs alike to both parents, only that in domestic affairs the power of the father is a little superior. But if he is dead or absent, it is wholly vested in the mother.

'Tis trifling to found this power merely in generation*, or to follow some law-maxims about the goods formed by our labour out of our own materials, or other accessions of things animate or inanimate, which have no use of reason or no capacity of holding any rights. Both the bodies and souls of children are formed by the divine power, that they may, as they grow up, arrive at the same condition of life, and an equality of right with ourselves, tho' for some time they must be governed by the wisdom of others. For children may have property, and other rights, quite independent of their parents; who seem to have no other power over any goods conveyed to their children by others than that of tutors or curators. Whatever parents abandon this guardianship of their children committed to them by nature, either by expo-

* This is designed against Hobbes and Filmer.

sing or entirely neglecting them, forfeit also the parental power connected with it: and any one acquires the whole parental power who takes care of such children.

Parents are most sacredly obliged to provide for their children all the necessaries of life, and even to improve their condition as much as they can; and above all to form their manners to all virtue by instruction and example: for without this their lives must be miserable and infamous, tho' in the greatest affluence.

What parents expend on children who have no stock of their own, is justly presumed to be donation: and it would be inhumane in parents, who are not in great distress, to charge food, clothing, and necessary education, as a debt upon their own children. But if the parents are in great distress, or if any one of their children have a stock derived from some other friend, parents may justly state such an account with their children, and exact payment from them of all the prudent expences made upon their education; and children in this case are bound to make such payment either by their labours or otherwise. Altho' therefore from the common affections of parents we justly conclude, that their private fortunes are acquired for their children as well as themselves; whence appears the right of children to succeed to the inheritances of their parents; yet children are not to look upon themselves as less bound to gratitude on this account: nay

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they are rather the more bound. For the more firm and disinterested any affection is, and the more deeply it is rooted in the person's nature, the more it is to be valued, and the stronger is our obligation to gratitude.

III. PARENTS may acquire by civil law a further power over their children, as the law commits power to any magistrates. For civil power having different foundations and greater ends, extends beyond the parental. And children, as they have from their birth enjoyed protection and the other advantages of a civilized life in a society constituted for the good of all, are plainly bound to perform to the community on their part * all that's due from good citizens; and particularly to preserve that constitution, and transmit the same to future ages. Minors therefore may justly be delivered as hostages, or be obliged to military services of the greatest danger in great exigencies.

IV. CHILDREN even when adult owe all reverence and gratitude to their parents, not only in return for benefits received, which scarce any duty of theirs can sufficiently compensate; but also out of regard to God, by whose providence it was ordered, that we descended from such parents, united with them in ties of blood and natural affection, and an habitual reverence from our cradles. They ought therefore to bear with patience any weaknesses or froward humours of aged

* See Book II. ch. xiv. 2. of obligations resembling those from contracts: and the following ch. v. 2.

parents, as the parents long bore their childish follies. Particularly 'tis the duty of children to consult the satisfaction of their parents in entering into marriage; since the parent is also deeply concerned in this important step; by which their children enter into a strict society for life with others, from whence must proceed grandchildren to their parents, to succeed sometimes to their names and fortunes, and always to their tenderest affections.

After the proper parental power expires, there often succeeds that of the *head of a family*; which is of such extent as the domestics make it by their own consent express or tacit, by voluntarily continuing in or entering into, a family, where they knew such a degree of power was assumed.

C H A P. III.

The RIGHTS of MASTERS and SERVANTS.

WHEN mankind were considerably multiplied, there would be many who had no other fund of support than their labours; and others of greater opulence, who for their ease would need much of the labours and services of others. And hence the relation of master and servant would arise, founded on some contract. Nor is it of consequence whether such contracts at first were for life, or only for a certain term: since excepting the point of duration, the rights and obligations were the very same. The points following are of more consequence.

1. The labours of any person found in body and mind, are of much more value than the bare simple food and clothing of a servant; as we plainly see that such can purchase all this by their labours, and something further for the support of a family, and even for some pleasure and ornament. If any one therefore has incautiously insisted for no more in his contract; yet as the contract is plainly onerous, he has a right to have this inequality redressed.*

2. Where the labours were not specified, the servant is deemed to have engaged only for such as men

* Book II. xii. 4.

of humanity in such stations commonly exact from their servants; and to have submitted only to such coercion of his master as is necessary for the good order of a family, if he should neglect his work or misbehave. But he retains all other natural or acquired rights.

3. If indeed the custom is known to have obtained, that heads of families assume a sort of civil power over their domestics; the servant is justly deemed to have consented to this also, as far as it is managed consistently with humanity. The servant is bound to perform his work; but retains all the rights of subjects under civil government; particularly all such as are naturally unalienable: and may justly defend them, even by violence, against any invasions of them by his master.

4. Where the services have been specified in the contract, the servant is bound to no other. Nay tho' they were not, and the contract was perpetual or for life, yet the master cannot transfer him to another without his own consent; since 'tis of high importance to the servant what master he is subjected to, and in what family. And for the children of such servants they are all born free.

II. HITHERTO we have treated of service founded on contract. But there is a far worse kind, to wit, of those who for some great damage done, which they can no other way repair; or on account of some great

crime, are adjudged by way of punishment unto perpetual labours to others.

And yet even in these cases, they don't lose all the rights of mankind, but only such as are naturally fit to compensate the damage, or are necessary to give security to the public against like injuries for the future. If the lives even of the worst criminals are spared, after they have endured all such public punishments as the safety of society may require, 'tis unjust to treat them with any further cruelty; provided they are willing to perform the labours they are condemned to. And they have a right to defend themselves even by violence, against new injuries, or violations of any rights still remaining to them. But as slavery of this kind is constituted solely for the behoof of others; the master may transfer to another such a slave without his own consent. But no cause whatsoever can degrade a rational creature from the class of men into that of brutes or inanimate things, so as to become wholly the property of another, without any rights of his own.

Nations in other respects not barbarous, condemned all captives in war, into this most miserable condition; establishing an inhuman law even against themselves, and strangely conspiring to subject themselves and their posterity, upon many very possible contingencies, to the most miserable and ignominious treatment. Upon which subject the following maxims seem just.

1. Whoever makes war without a just cause acquires no right by such violence, over either persons or goods taken, which he can use with a good conscience, tho' he may detain them with external impunity, as we shall shew hereafter.*

2. One who has a just cause, yet should set just bounds to his demands: nor can he demand any thing from the conquered except either under the name of *punishment, reparation of damage* done, or *precaution* against future injuries†.

3. None are punishable but such as either by some action or omission, contrary to their duty, have occasioned and contributed toward these injuries done to us by the war. And 'tis plain, this is seldom ever the case of the far greater part of the adult subjects of any state, who are capable of a share in public affairs; not to speak of women and children, who make three fourths of every people, and ought to be deemed joint proprietors with the heads of families in their private properties. And tho' all heads of families payed tributes toward maintaining the war; this can't be deemed a crime in them, as they were under the immediate distress of their governors, who would otherwise have levied these taxes by force, and punished the

* See the following ch. ix. 4.

† See Book II. xv. 5, 8. On this subject of slavery many just reasonings are to be found in Mr. Locke's 2d book on government; and Mr. Carmichael's notes on Puffendorff, Book II. ch. iv.

refractory. Grant they had consented to the war, following some specious reasons published by their governors; their ignorance generally was invincible: nor was their consent of such importance as to cause the war, nor would their dissent have prevented it. Nor can we ever suppose that any political union can transfer the guilt of one person upon another who did not concur with him.

4. Nay the very soldiers, all such at least as had no share of or influence in the public councils, as they enlisted upon presumption of being employed only in just causes, or persuaded by such reasons as their governors publish; they are excusable entirely, both on account of ignorance and necessity. To men once enlisted 'tis a capital crime to disobey orders. It must therefore be exceedingly inhuman to inflict any thing severe upon them by way of punishment, provided we can be secured against further dangers from them: and this we always may be from captives, by keeping them in our own country, and mixing them with our citizens or our colonies, without depriving them any way of their liberty. All this not only humanity will recommend, but a consideration of the uncertain accidents of war, and the inconstancy of fortune.

5. Under pretence of repairing damages, the conqueror can demand nothing from the innocent citizens, except upon the same grounds that one demands it for damage done by another's slaves or cattle, to

wit this, "that, whoever contrives or procures any thing for his own utility, by which others without their fault receive hurt, is bound either to repair the damage, or deliver up the goods, or contrivance whatever it was, to the person injured." The conqueror may therefore justly demand from the conquered citizens, that they abandon their unjust governors the causes of the war; or that they oblige these governors to repair the damages; or that they repair them themselves; and these three should be left to their choice. This holds most evidently as to these first citizens who at first constituted the government; or those who have great power in the state, by whose council the war was undertaken; or who have it in their power to restrain their princes in their unjust designs. As to others who are of no weight in public affairs, their plea against even compensating of damages is more favourable.

6. But as soon as the defeated have repaired all damages, or the conqueror has obtained reparation to himself by force and military execution; and has also obtained security against future injuries, such as a wise arbiter judges sufficient, he has no further demand upon the innocent citizens. Now he may obtain all this in a much easier, and more merciful way, without depriving the innocent citizens of their liberty. The governors are in the first place bound to repair all damages, and the citizens only in the second place when their governors cannot do it, or decline it.

7. The children of slaves of any sort are all born free*, as we shewed above.

8. Whoever purchases a person for a slave, or detains him as such, is always bound to shew that this person was deprived of his liberty upon some just ground. The original proprietor of the matter in question is always at hand: since nature made every man master of himself, or of his own liberty. 'Tis plainly therefore incumbent upon the violent possessor to prove his title; and not upon the person deforced, and claiming his liberty, to prove a negative, that he did not lose, or forfeit his liberty. [Without a previous inquiry of this kind no man can in this case be a fair purchaser.]

9. Nor is it justly pleaded here, that captives would be put to death if they could not be made slaves and sold as such: and that therefore they owe their lives and all to the purchasers. But sure no higher sort of title arises to the purchasers in this case, than to such as have done any other useful service of equal importance; such as, rescuing a fellow-citizen from robbers or murderers, ransoming them from pirates, curing diseases or wounds which without the aid of art would have been deadly. All such persons should have all expences refunded to them, and a generous compensation for their labours and

* Book II. xiv. 3. See Mr. Locke on govern. Book II. as also Hooker's *Eccles. Polity*, and Sidney on *Government*.

art. But whoever alledged that they could claim the persons they thus served as their slaves?

III. As it is the duty of servants who are justly subjected to others, to perform their work with diligence and fidelity; regarding God the common master of all, who is ever present with us: so 'tis the duty of masters to exact no more from servants than what they have a right to, and to abstain from all cruelty and insolence; as it becomes those who remember that all are of one blood, and naturally allied to each other, and that fortune is inconstant, that the souls and bodies of servants are of the same stuff with our own, and of a like constitution; and that all of us must give an account of our conduct to God the common Parent and Lord of all.

C H A P. IV.

The ORIGINAL of CIVIL GOVERNMENT.

HAVING finished the account of domestic society, we proceed to shew the origin and rights of civil society, [in which 'tis universally understood, there is included a right vested in some person or council to decide all controversies arising amongst large numerous bodies, to direct the actions of all for the common interest, and to compell all by force to obey their orders.] By the associations already explained, if all men were faithful in discharging their duties, human life must have sufficient affluence and pleasure. It must therefore have been some fear of mischiefs to arise either from the weakness or vices of men, which has moved them to subject themselves to civil power. But we must not therefore, call civil society *unnatural* or contrary to nature. For whatever that reason, nature has endued us with, shews to be necessary or very conducive to obtain those advantages we naturally desire, or avert the contrary evils, must plainly be deemed natural to a creature endued naturally with reason and forethought. Men therefore are justly called "creatures fitted by nature for civil polity."

Let us suppose all men so just that none would do to others any thing he judged injurious, but that they are pretty liable to mistakes about their own and o-

thers rights, through their strong selfish desires, and the bias of impetuous passions: this would frequently occasion controversies among them. Let us further suppose that many honest men are yet too suspicious, so that they won't submit their disputes to the arbitration of others, each fearing perhaps the interest of his adversary with the arbiters, or his art in seducing them: if there be added to this, too much confidence on both sides in their own force, and obstinacy in opinion; their controversies in natural liberty can be decided no other way than by violence and all the mischiefs of war.

But there's something in our nature which more immediately recommends civil power to us. Some of our species are manifestly superior in wisdom to the vulgar, as the vulgar are often sensible. These of superior sagacity, as all must own, are capable of contriving and inventing many things of consequence to the common utility of multitudes, and of pointing out more effectual methods for each one to promote his own interest, if their directions are complied with. If to these abilities be added also eminent moral virtues, goodness, justice, fortitude; the appearance of such excellencies obtains the trust and confidence of all, and kindles their zeal to promote such persons to honour and power; as they conclude that under their direction all may obtain every sort of prosperity. 'Tis highly probable therefore that not only the dread of injuries, but eminent virtues, and our natural high ap-

probation of them have engaged men at first to form civil societies

II. BUT if we consider how much injustice, depravation of manners, avarice, ambition, and luxury prevail among men: it will be manifest, that without civil power, men cannot be preserved in safety, not to speak of any high advantages or pleasures to be enjoyed in society: and that it is by civil power alone an effectual remedy, and such a one as must strike the senses of the most inconsiderate, can be found for the evils to be dreaded from these vices of men. For tho' all the members of a large assembly were so unjust, that upon a fit opportunity each one for his own interest would do injuries to others; yet each one would abhor like injustice done by his fellow, when he had no share in the gain of it. An assembly therefore of such men, of whom each condemned that injustice in his neighbour which he would indulge in himself, will never make unjust decrees for their whole body. Each one will be ashamed to own his dishonesty, and will leave in dread of receiving injuries from others, unless they are all restrained by equal laws enforced by proper punishments.

Nor is there any other way of preserving society in safety. For altho' men were not generally so depraved, and that even humanity and conscience restrained the generality from injuries, and inclined them to give aid to any who happened to be wronged: yet multitudes would omit this duty through fear and cow-

ardice, if it exposed themselves to danger. Nay further; a sufficient number of honest brave men, if they were not directed by some head, and that united in their efforts, would run into the most different measures, according to their different sentiments; and when thus disjoined would become a prey even to a smaller number of less bravery, who were united in their counsels.

'Tis therefore very probable that some of the wiser and more sagacious, observing these inconveniencies of a state of anarchy, fell upon this as the only remedy, that a large number of men should covenant with each other about entering into a firm society, to be regulated by the counsel of the wiser few, in all matters relating to the safety and advantage either of individuals or the whole body. And discerning the many conveniencies to ensue upon such a project, have explained it to others, and persuaded them to put it in execution.

III. THEY who ascribe the first origin of all civil power to the violence of ambitious men, plainly presuppose that already existing, whose original they are searching for: as no one man could have force enough, without a large number of others already subjected to his direction and government, to compell a multitude sufficient to form a state, to submit themselves to his power. A civil power therefore was constituted previously to that conquest they suppose to have produced the first civil power.

Should one alledge that a potent head of a family, with his numerous domestics, might have conquered and thus compelled his neighbours around to submit to him as their prince. This may have happened no doubt. But we are not to regard names, but things themselves. Heads of families no doubt sometimes had a proper regal power over their domestics. And further, we are not inquiring into the possible injurious methods of usurpation, but into the probable just causes of just power.

IV. THAT it must conduce much to the interest of a multitude to be governed by a council of the wise, no man can deny. And altho' under some foolish plans of government, power may often be intrusted to bad hands, and thence great mischiefs arise, as the corruptions of the best things may be most pernicious; yet this is no dishonour to civil government, as if it were in general of little use or pernicious. For God has given men sufficient powers of reason to choose some of the more prudent convenient forms out of the innumerable multitudes conceivable.

A state or civil society is, "a society of free men united under one government for their common interest." That the common interest of the whole body is the end of all civil polity, is owned by all. This all subjects insist upon; and all governors glory in it as their dignity; except some vain monsters, who forgetting their mortal state, arrogate to themselves the rights of almighty God, or even powers more exten-

five. The very notion of civil life, or polity, is opposite to despotism, or the power of masters over slaves. That civil power therefore alone is just which is naturally adapted to this end: other power tho' granted by the rash deed of an ignorant people, has no foundation of right. There was an essential defect in the deed granting it, as it was founded in an error about what is owned by all to be most essential in such contracts.

One can scarce avoid wondering how some * ingenious authors seem to pique themselves upon aggravating and exaggerating all the burdens of civil subjection, as if they designed to deter men from entering into it; but then least they should do so, they paint a state of liberty and anarchy as the most frightful monster of all. Whereas 'tis plain both states have both their advantages and disadvantages. There are no doubt many dangers in a state of liberty, but these not continual: generally they are greater and more frequent than in civil life; unless a people have been exceedingly incautious in the plan of power they constituted: as in civil life we have a much surer prospect of protection from injuries by the united force of all. Nor are there any evils peculiar to a civil life under regular government; the like or worse, men

* The author has here in view Hobbes; and Puffendorf, both in his greater and lesser book, who has too blindly followed Hobbes, nay even transcribed his very words.

were also * exposed to in liberty: [as it will appear by considering the several parts of civil power in the following chapter.]

* Thus subjects are bound to pay taxes, for the common interest, for fortifying or defending the state. But each one in liberty must on his part be at greater charges, either for his own conveniency, for fortifying his house and arming his domestics, or for hiring assistance. Each subject may be obliged to hazard his life for the state. But so each one in anarchy may more frequently for his own defence. Subjects submit to a power of life and death over themselves in criminal jurisdictions. But so each one in anarchy is subjected to a worse power of any enraged person who alledges he is injured by him, and intituled to use force for redress. If by a power of life and death one means an arbitrary power in a governor, upon any caprice, without a crime alledged, to take mens lives away; no such power is in any wise polity; nor can any human deed constitute it.

C H A P. V.

*The INTERNAL STRUCTURE of STATES: and the
SEVERAL PARTS of SUPREME POWER.*

AS no governors are the natural parents or progenitors of their people, nor if they were, could they transmit to any one heir the parental power over his adult brethren: as this power is founded solely upon the parental affection, and the weakness of immature years: the parental power can never be the foundation of the civil, tho' it be a natural sketch or emblem of it. Nor can any person have such power over a whole people as masters have over slaves; as appears from what was already said. Nor has God by any revelation nominated magistrates, shewed the nature or extent of their powers, or given a plan of civil polity for mankind. Nor lastly can mere force without some foundation of right constitute any just power. It must therefore remain that some *deed* or *contract* of a people must be the sole natural origin of all just power.

In some extraordinary circumstances the case may be otherwise. For since the good of the whole body, as all allow, is the sole end of all civil power; if any person of eminent wisdom and great power consults this end sufficiently, in prescribing a legal plan, which all upon trial shall soon heartily embrace, he may per-

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haps without any iniquity impose this plan upon a rude and unexperienced people, which upon experience they shall soon approve, tho' he could not obtain their previous consent to it. But as no people can be happy while they live in perpetual doubts and fears, as to the security of their highest interests from the invasions of men in power; we may pronounce in general that there can be no right to power except what is either founded upon, or speedily obtains, the hearty consent of the body of the people.

II. To constitute a state or civil polity in a regular manner these three deeds are necessary; first a *contract* of each one with all, that they shall unite into one society to be governed by one counsel. And next a *decree* or *ordinance* of the people, concerning the plan of government, and the nomination of the governors; and lastly another *covenant* or *contract* between these governors and the people, binding the rulers to a faithful administration of their trust, and the people to obedience. 'Tis true that in the first constitutions of power, 'tis scarce credible that a rude and incautious multitude, full of admiration of the shining virtues of some more eminent characters, took these three formal steps. But then in every just constitution of power, * something was originally done which plainly included the whole force of these three transactions; since the end known and professed by all

* See Mr. Carmichael's notes on Puffendorf, Lib. II. vi. 9.

sides in this constitution of power was the common good of the whole body.

As to the transmitting of these civil obligations to posterity, the following observations will explain it.

1. Each citizen in subjecting himself to civil power stipulated protection from the whole body, with all the other advantages of a civilized life, not only for himself but for his posterity: and in this, tho' uncommissioned, did them a most important service. They are bound therefore, * whether they consent or not, to perform to the body of the state, as far as their power goes, all that which could reasonably be demanded from persons adult for such important benefits received. Now 'tis highly reasonable that all such should on their parts contribute to the defence and support of that state, by which they have been so long protected in a civilized life, and not desert it unreasonably; but transmit that association with its beneficent influence to posterity.

2. As it must be extremely dangerous to any political body settled in any district, that any lands within the same should remain exempt from the civil power of the united body, to be a receptacle to fugitives or foreign enemies; 'tis justly presumed that when any body of men possessing such a district of land constitute a civil power, each one thus subjects his lands to it, that no person can hold the same without also

* This is an obligation *quasi ex contractu*. See Book II. xiv. 1.

subjecting himself to it, and uniting with the body politic.

3. And yet, in times of ease and peace, it would seem unjust and dishonourable to any state to hinder its citizens from selling their lands, removing to any other state they please, and freeing themselves from their former political relation. For the several subjects by the taxes or tributes they pay annually, compensate all the ordinary advantages they receive from the community: and it would be unjust to hinder them to consult better their own interest if they can elsewhere. Nor is there danger that any state will be deserted by many of its subjects, unless it be either miserably constituted or administered; and in such cases the citizens have a better right to quit it, and cannot be compelled to remain its subjects.

III. A STATE constituted in this manner becomes as *one person* in law, holding *rights* different from those of the several members; and under *obligations*, which bind no individual; and committing to certain persons or councils the management of its common interests. Among several states thus constituted, as they are all with respect to each other in natural liberty and independence, the like rights and laws obtain as among individuals in liberty. States have their perfect rights, and obligations to each other, and are bound to offices of humanity, in a like manner as individuals in natural liberty: and have like rights of self-defence. This is the case of all states which are

independent, whether greater or smaller, whatever names and titles they bear, more humble or more ostentatious. By an easy substitution therefore of states for individuals the natural law with respect to individuals in liberty, makes all that *public law* of states with respect to each other, which is of necessary obligation. As to voluntary or positive *public law*, we shall touch at it hereafter*.

IV. THE several powers requisite for governing a people are divided into the *greater* and *lesser*. Of these greater powers some are executed within the bounds of the state, and others respecting other states are to be exerted abroad. Of the former class, is that of *making laws* to regulate the behaviour of the subjects, and maintain their rights, still regarding the law of nature.

2. Another is, that of *exacting all such tributes* or revenues as the administration of the state requires: this some make a branch of the former. Revenues are sometimes raised from subjects, sometimes from conquered provinces; some destined for support of the families of the supreme governors, and some for the public uses of the state. As to the former, elective princes are deemed only as life-renters, and hereditary princes have a right like that in fiefs, to be transmitted unburdened to their heirs. As to the other branch, princes can only be deemed administrators or trustees for the whole state.

* Ch. ix. and x. of this book.

3. A third branch of power is the *executive*, containing all jurisdiction civil and criminal; and the right of constituting magistrates, and judges to take care of all public affairs, and decide controversies, as also officers to collect the tributes.

The powers to be exerted abroad are first those of *war*, in enlisting soldiers, and appointing officers, and directing all military operations.

2. The power of making *treaties*, either for settling peace, or maintaining commerce, and of constituting ambassadors for this purpose.

There's beside all these a certain *extraordinary right* in the supreme governors of any people, in great exigencies, to inroach upon those rights of the subjects which for ordinary are to be religiously maintained to them: as when it happens to be absolutely necessary, in some perilous emergencies, either to compell them to some extraordinary dangerous services, or to contributions of their goods beyond the ordinary proportions. This right in civil life answers to these extraordinary rights of necessity, we formerly * mentioned in natural liberty.

The smaller rights commonly vested in the supreme governor, are those of conferring civil honours, coining of money, granting to hold fairs or markets, legitimating of children, erecting corporations, admitting minors as if they were of due age, pardoning crimi-

* Book II. ch. 16. art. 3. near the end.

nals, giving protections to debtors, and such like; which we briefly pass over as of less importance, and not always necessary in every state.

V. THOSE persons or councils have the supreme power, who are intrusted with the greater branches of power abovementioned, or the greater part of them, so that they can exert them according to their own judgment, and no other person or council can rescind their deeds. Many have supreme power who don't hold it unlimited, nor even for life: such too as cannot alter the order of succession, or abolish any of the fundamental laws of the state. He is supreme to whom the chief parts of civil power are committed, tho' within certain limits, to be executed by his own order for the good of the body, so that he does not act by new commands, or commissions from any other; and whose deeds derive not their force from the consent of any superior.

In every state the same quantity of power is deemed to be lodged some where or other; either with a monarch, a senate, or popular assembly, or at least with the whole body of the people. Nor is it any diminution of the supremacy or independence of a state that it is bound by its treaties with others, even tho' they be very inconvenient ones; provided the state can still exercise all the greater parts of civil power, and can govern itself independently of others.

If a number of states enter into such a strict alliance, as to constitute some one person or permanent

common council for them all, and commit to this person or council some parts of the supreme power, to be executed for them all; they are called a *system of states*, or *Achaian states*, from a famous instance of that kind. But independent states then incorporate entirely into one, when the very same persons or councils have committed to them all the parts of the supreme power to be executed for them all.

C H A P. VI.

Of the VARIOUS PLANS of GOVERNMENT.

THE simple forms of government are divided into three classes, according as the power is committed to one person, or to one council. When it is committed to one person, it is called monarchy; when to a council of some few eminent citizens, it is an aristocracy; and when it is committed to a popular assembly either of all the free citizens, or of some more reputable persons deputed by them, 'tis democracy.

When power is committed to a council, that is deemed the will of the council which is determined by the major part; unless by some fundamental law, a certain number of members is made necessary for determining any matters of public administration, as a *quorum*; and what proportion of this number, can make any alterations. Precaution should also be taken against an inconvenience which may always happen when a question of three or more parts is put to a vote, that that part to which a great majority may be most averse, may yet have more votes than any one of the other parts, and thus be enacted. This may always be prevented by reducing a complex question into two or more simple ones, of two parts each; or by excluding by previous votes one or two of the parts of the complex question, so as only two parts shall

remain for the last decisive vote. A like method may be taken where many candidates set up for the same office.

II. OF each of these simple kinds there are many species. Monarchy is either *absolute*, where the whole administration is committed to the prudence of the monarch; without any other limits than those which are alway understood from the general end of all civil government; or it is *limited* in the original conveyance of the power; and certain rights reserved to the people and exempted from it. And then each of these kinds are subdivided into *hereditary* and *elective*: the elective princes again may either be chosen for *life*, or for a *certain term*.

There are likewise several kinds of *aristocracy*, *absolute*, or *limited*; *hereditary* or *elective*; *perpetual* or *temporary*. * In this last sort the senators hold their seats for a certain term; upon the expiration of which, others are substituted in their places. If such new senators are elected by the people, and any free citizen may stand candidate, the council is rather *democratical*: but if the places are filled by the votes of the remaining members of the council; or only some emi-

* The characters of aristocracy, are *cooptation* by the senate, to a perpetual seat, and a limitation to certain eminent families, distinguished by fortune, or bearing great offices. The characters of democracy are *popular elections*, *temporary seats*, and *access to all citizens* to stand candidates. There's in many constitutions a mixture of these different characters.

ment families can be candidates, it is *aristocratical*. When the seat in the senate depends upon a certain quantity of wealth; or is held in virtue of certain lands justly possessed; 'tis called properly *oligarchical*. When these alone can be elected who have discharged certain great offices with approbation, this is deemed *aristocracy* in the properest sense, and the plan of it most commended by some great authors of antiquity.

There are also different kinds of *democracies*, as the popular assembly is differently constituted. We have examples of two ways in the *comitia curiata*, and *centuriata* of the *Romans*. In the former all citizens voted equally: in the later according to their fortunes. In some states the lot determined the members of the assembly: in others the people being divided into a number of tribes, counties, or districts, and these again subdivided; each division sends so many delegates or deputies, chosen by themselves, to be members of the popular assembly.

The complex forms are innumerable, according as any of the different sorts of senates jointly share the supreme power, with any of the sorts of monarchy; and again as any of those complex kinds are again conjoined with one or other of the popular assemblies: and then as such or such parts of the supreme power are vested in one or other of these councils, or in the monarch; or in all three jointly.

III. THAT we may discern which of these forms is preferable, the following observations seem proper,

1. In constituting of a state these four points are to be aimed at; that first, there be sufficient *wisdom* in the government to see what is best for the state; and then *fidelity* to choose what is best; and next that *concord* be maintained; and lastly a *secret and speedy execution*. If in any plan sufficient precaution is taken for all these, a people cannot desire more from its civil polity.

2. Where the parts of the supreme power are placed in different subjects or bodies; there must be some such political bonds between them, as shall prevent their acting in opposition to each other; that the prince, for instance, may do nothing of high importance without consent of the senate or popular assembly; nor these bodies do any thing without consent of the prince; nor one of these bodies without the concurrence of the other. If any sufficient precautions of this kind be taken, the civil power is better lodged by parts in different bodies, than all committed to either a monarch, or to any one council.

3. The power wheresoever lodged will never remain stable unless it has large *property* for its foundation; without this it must be fluctuating, and exposed to frequent seditions. Wealth carries force along with it, which will overturn rights not supported by wealth; or be wrested from the owners by the civil power. An hereditary monarchy needs for its stability large crown-lands, or hereditary provinces, belonging to the monarch's family. A senate will not

remain stable unless a large share of the lands are the property of the senators: and lands must be dispersed among great multitudes, and preserved thus dispersed by agrarian laws, to make a stable democracy; or some other causes must keep property much diffused. And altho' the diligent and active should not, without weighty causes, be any way restrained in their just acquisitions: (and indeed the best sorts of democracy may allow them to acquire as much as can be requisite for any elegance or pleasure of life that a wise man could desire:) yet we are never to put in the balance with the liberty or safety of a people, the gratifying the vain ambition, luxury, or avarice of a few. It may therefore often be just to prevent by agrarian laws such vast wealth coming into a few hands, that a cabal of them might endanger the state.

4. No such insolent or oppressive privileges should be granted to any one order in the state, as would exclude all others from public offices of dignity or profit. For they will become occasions of perpetual seditions*.

5. As it would be of little consequence what were the form of polity, were it provided that none but good and wise men got into power; (which perhaps no precaution can insure) the main drift of good policy is, to provide that even tho' bad men come into power, they shall either have small temptations to

* Of this we have a clear instance in the Roman state, till the plebeians got access even to the consulate.

abuse it, or at least no hopes of gain and impunity in doing so.

6. As to the fittest number for making an happy state, nothing can be precisely determined. If the number is small, there won't be strength enough against bands of the avowedly unjust, who may attack it by surprize; nor will there be sufficient wealth to execute any wise designs for the improvement of life. On the other hand when the numbers and the extent of a country is very large, no governors can take sufficient care of all their interests, and prevent frauds, extortions and oppressions, even by the avarice of the deputy magistrates, as access to complain must be more difficult. And besides, far fewer men can be employed in the greater and more important state-affairs, and thus improve in that most important part of wisdom, than if out of the same numbers and the same tract of ground, several distinct independent societies had been framed. Indeed this is seldom matter of choice, what numbers should unite. For if once vast empires are formed, it becomes necessary to any little states around them to incorporate together, as many of them as may be, for their defence against a potent neighbour. But as agrarian laws are often justifiable in a state, to prevent the immoderate increase of wealth in the hands of a few; 'tis equally just, for the same reasons, that smaller neighbouring states should take timely precautions, and that by violence too, if gentler methods are not like to succeed, that no neighbour.

state should acquire such force as may enslave all around; especially if they see a prevalent disposition in all the institutions and manners of any neighbour-state toward military affairs and conquest.

IV. MONARCHY has these peculiar advantages, that it is adapted to preserve concord, and make a secret and speedy execution of any design. But then in hereditary monarchies there's small security for either the wisdom or fidelity of the monarch. In elective monarchies there's greater probability for wisdom; but rather less for fidelity: and upon the death of each monarch there's an open gate to civil wars. Under an absolute hereditary monarchy nothing is secure. Under the limited hereditary, no better precaution is taken for wisdom, but there is better precaution as to a faithful administration: since if the monarch violates the fundamental laws, or breaks over the bounds set by them to his power, he plainly declares himself a tyrant, and forfeits his right; which all the subjects must plainly see: and hence will more readily agree in dethroning him to set up another, or to constitute some better plan. But then in the limited monarchies there generally prevail factions, which sometimes turn into civil wars.

In the simpler hereditary aristocracies scarce sufficient precaution is taken for wisdom, and scarce any for fidelity, concord, or secret and speedy execution. In the elective are better precautions for wisdom and fidelity, but no better for concord or execution.

In democracies we are always secured as to fidelity; and may have a tolerable prospect as to wisdom too, when mens votes are according to their fortunes; or when the assembly is made up of deputies elected by the people: but there's no security of concord, or of speedy and secret execution in any pure democracy.

The most convenient way of voting in all large councils or assemblies is by the ballot: as by this means, men need not dread the resentments of men in power; and 'tis less easy to use any indirect influence. And altho' in the ballot there's no restraint of shame, but a door opened for private favour, hatred, and envy; yet it seldom happens that these passions work in the majority of a people without some just or probable cause. But if something of the lot be also intermixed, * it may often quite defeat great cabals, and their arts of corruption, and stop the power of malice and envy. But the lot alone must be quite unfit to determine any point of consequence, or to advance any persons to offices; for tho' no man is affronted by a disappointment this way, nor is there any room for partial favour; yet it is plainly void of all prudence or wisdom.

V. WE have said enough to shew that none of the simple forms of government are well adapted to preserve any state happy. Nor is it of any avail to plead antiquity here. If all the most antient ways were best,

* All these points are fully explained by Harrington.

we should return to caves and beast skins, for our shelter and dress. What flatterers of princes often tell us, that monarchy was the earliest form, is rather dishonourable to it; importing indeed that it at first pleased a rude and unexperienced populace, but could not continue to please upon experience and the increase of wisdom. And indeed in nothing could one less expect that the first essays would be perfect, than in the constitution of civil polity; a work requiring the greatest knowledge and prudence, to be acquired only by much thought and experience of human life. The several great inconveniencies attending each of the simple forms shew the necessity of having recourse to the mixt and complex; and the several great advantages peculiar to each of the simple, shew that those mix'd forms are best where all the three kinds are artfully compounded: and this was the opinion of the wisest men of antiquity*.

As a council of delegates or deputies duly elected by a general popular interest can never want fidelity or good intention, and seldom can be deficient in wisdom, it may seem adviseable that a large share of the civil power should be lodged in such a body; such as that of enacting laws and even determining definitively the most weighty affairs in deliberation. And this part of a constitution should be secured by agrarian laws: not so strait however as to discourage industry,

* Plato, Aristotle, Zeno, Cicero.

or exclude any innocent elegance or ornament of life.

If there be also a *senate* of a few who have approved their abilities and fidelity in discharging the great offices of the common-wealth; it may safely be intrusted with the sole right of deliberating, debating, and proposing business to the popular assembly. In both councils it may be proper to contrive a rotation, by new members gradually succeeding to the old, so that neither council may have above one third of unexperienced new men, nor yet any one man continue a member perpetually. Laws limiting the times that any general, minister of state, or magistrate can continue in office have also great advantages, to prevent any person's so rooting himself in power or popularity, as to be dangerous to the constitution; and to train up greater numbers in political wisdom, by experience in all the important offices; so that the state may never be obliged to have all its hopes depending upon one mortal life. Where such laws are sacredly established, the state will never want the benefit of the wisdom or experience of such as have served out their legal time. For it will be no matter of offence that at the expiration of it they must lay down their offices according to law.

And lastly, for sudden unexpected exigencies or dangers, and for the secret and speedy execution of what the public interest may require, some sort of regal or dictatorial power is requisite; but such an one as has no other foundation of its force but the laws

themselves. And to this power may be committed the command in war, and the execution of the laws. This third branch may be as an arbitrator, holding the balance between the two other parts of the constitution, if there should arise any high contention between the senatorial order and the plebeian.

The power of promoting to all sorts of offices may be some way vested in these three jointly, or divided among them; so that offices requiring great abilities and wisdom should be filled by the nomination of the senate; such officers as are to be employed in speedy execution, to be nominated by the prince: and such as are to protect the rights of the people, and administer justice among them, to be elected by the people.

A censorial power too would be of the highest use, to reform, or prevent the corruption of manners; by degrading persons of any dignity whatsoever, as soon as they run into a dissolute course of debauchery.

C H A P. VII.

*The RIGHTS of the SUPREME POWER: and the
METHODS of ACQUIRING IT.*

THE persons vested with the supreme power, have it with that extent which the constitution or fundamental laws have given them. The sum of *civil power* in all states is the same; the same quantity of it in every state resides somewhere or other, at least with the body of the people. But the powers vested in the king, or in any councils, in one state, may be very different from what is vested in like persons or councils in others. For in some, certain rights of the people are expressly exempted from the power of any prince or political council; but in others, there's no such exemptions. But as the end of all civil power is acknowledged by all to be the safety and happiness of the whole body; any power not naturally conducive to this end is unjust; which the people, who rashly granted it under an error, may justly abolish again, when they find it necessary to their safety to do so. Nor can any thing be conceived more insolent or perfidious, than that persons intrusted with power solely for the good of a people, should strive to retain it by force, for their own grandeur, when it is found destructive to the people.

It were to be wished that in these cases, such pow-

ers should be abolished in a peaceable manner, by mutual consent, rather than by force. Nor is it justifiable in a people to have recourse for any lighter causes to violence and civil wars against their rulers, while the public interests are tolerably secured and consulted. But when it is evident, that the public liberty and safety is not tolerably secured, and that more mischiefs, and these of a more lasting kind, are like to arise from the continuance of any plan of civil power than are to be feared from the violent efforts for an alteration of it, then it becomes lawful, nay honourable, to make such efforts, and change the plan of government.

What is alleged about some peculiarly divine right, and inviolable sanctity of governors, especially monarchs, is a mere dream of court-flatterers. In one sense every right is divine which is constituted by the law of God and nature. The rights of the people are thus divine, as well as those of princes: nay since the latter were constituted for the defence and protection of the former; the former should be deemed the more divine and sacred. The rights of the governor, as they are more important than those of any one private man, may be deemed more sacred than his private rights; but can never be deemed more sacred than the rights of the whole body. A good subject ought to bear patiently many injuries done only to himself, rather than take arms against a prince in the main good and useful to the state; provided the dan-

ger only extends to himself. But when the common rights of the community are trampled upon; and what at first is attempted against one, is to be made a precedent against all the rest, then as the governor is plainly perfidious to his trust, he has forfeited all the power committed to him.

II. In every sort of government the people has this right of defending themselves against the abuse of power. If the prince's power be limited, and yet he breaks over its bounds, invading such rights as the people had reserved in the very constitution of the power; the people's right of resistance is unquestionable. But even in absolute governments they have the same right; if their governor, ceasing to use his power, as if he owned it destined for the good of the body, should govern the whole state as his own property; and neglecting the common safety of all, turn every thing to the gratification of his own lust or avarice; or if he plainly declares a hatred of his people; or conducts all affairs in such a wretched manner, that not even the most sacred rights of the people, such as are necessary to any tolerable life, remain secure to them. Nor does this doctrine of resistance give to the people a civil superiority over their governors: for even slaves adjudged to the most miserable subjection for their crimes, may have a right to defend themselves against certain injuries their masters may attempt against them.

As to that question, who shall be judge in this

disputed point, whether the governors by their perfidy and mal-administration have forfeited their right? If 'tis alleged, the people cannot judge as they are parties: for the same reason the governors cannot judge. The only recourse then should be to impartial arbiters, either within the state, or in some other nation, if this could be safe: but if not; surely the people have a better claim to judge in this point; since *they* at first entrusted their governors with such powers, and the powers were designed for the management of the people's interests, and were constituted for their behoof. 'Tis true there are great dangers of mistakes on this head: but the governors are not exempted from errors more than the people. Men have often erred both about public rights, and the private ones too of self-defence: but we must not for that reason deny that they have such rights.

In this most important matter, no doubt, persons concerned are bound to use the utmost caution, and weigh all things on both sides. Nor ought we to involve our fellow-citizens in civil-wars, the most miserable of all wars, for any such lighter injuries, or wrong conduct of our governors, as may be incident sometimes to persons in the main good and of upright intentions. But when there's no other way of preserving a people, and when their governors by their perfidious frauds have plainly forfeited their right; they may justly be divested of their power, and others

put into their places, or a new plan of power established.

Nor does this doctrine of the right of resistance in defence of the rights of a people, naturally tend to excite seditions and civil wars. Nay they have been more frequently occasioned by the contrary tenets. In all ages there has been too much patience in the body of the people, and too stupid a veneration for their princes or rulers; which for each one free kingdom or state has produced many monstrous herds of miserable abject slaves or beasts of burden, rather than civil polities of rational creatures, under the most inhuman and worthless masters, trampling upon all things human and divine with the utmost effrontery.

III. UPON dethroning a tyrant, or upon the natural extinction of a royal family, or the death of an elective prince, there arises an *interregnum*. In which case, even altho' there be nothing expressly provided in the constitution, yet the political union of the people is not quite dissolved. They all continue bound by that first covenant we mentioned, to consult their common interest by joint counsels. They seem to be in a sort of simple democracy, for some time; in which it should be determined by plurality of votes of the whole, or of those at least who used to be concerned in the public affairs, what shall be their future form of polity and who are to be promoted to the government. Nor is it just that any smaller part, without consent of the rest, should break off from the political

union; unless the majority are setting up some unjust or destructive plan of polity.

IV. To princes, or rulers of any kind, who have evidenced integrity and fidelity in their trust, the highest deference and honour is due from their subjects; they should be supported and defended with the lives and fortunes of all, whether against rebels or foreign enemies. Nor are subjects freed from this obligation, by any such lighter faults or mistakes of their governors, as may be incident to men in the main upright and faithful to their trust. But if after all the efforts of their subjects, such princes are conquered and dethroned, either by some competitor or some foreign power, so that there remain no probable hopes of their recovering their just rights; 'tis their duty in such cases to quit their claim: nay 'tis justly deemed extinct: since all obligations between governors and subjects are mutual, depending upon mutual offices. And when it becomes impossible for one side to perform his part, the other is freed from his obligation. The people therefore, after their utmost efforts for their old rulers have proved unsuccessful, may justly submit to the conqueror, when they cannot otherwise consult their own safety. It would indeed be strange arrogance in any prince to expect that a whole people should be bound, by a vain zeal for his dignity and interest, to expose themselves to all the rage and fury of a conqueror, to no valuable purpose.

V. As natural liberty is "the right of acting as

“ one inclines within the bounds of the law of nature ;” (nor could we hold any such liberty, were there no laws to defend it from the force of the stronger :) so we say a people enjoys liberty when “ each one is allowed to act as he inclines, within the bounds of civil law, and not subjected to the caprice of any other.” We should never look upon laws as everive of liberty ; but that its sole enemy is the capricious humorous will or command of men in power. The Romans indeed in speaking of a *free people*, generally meant a democratical state ; where men had their turns of commanding, as well as of obeying.

VI. It was already shewn that civil power can scarce be constituted justly any other way than by the consent of the people : and that rulers have no other sacred rights or majesty, than what may arise from this : that of a large multitude of men, each one for himself subjected part of his rights to the administration of a certain person or council. And thus from a part of our natural liberty transferred to the ruler, and our property in a certain degree subjected to his disposal, arises the legislative power. In natural liberty also each one had a right to expose his life to the greatest dangers, in any honourable services in defence of his family or his neighbours, and when the common interest required it, he could commit himself to the direction of others in such services ; and hence the right of military command. Men had also this

right of repelling injuries, and punishing by violence any one who attempted or executed any injury, and even of putting him to death if this was necessary for the common safety: and hence arises all *criminal jurisdiction*, even to the inflicting of capital punishments. Nor need we have recourse to any extraordinary grants or commissions from God to explain any of these rights of civil sovereigns.

VII. Nor can any one form of government be esteemed more divine than others, on any other account than that it is better adapted to promote the prosperity of the community; which can least of all be alledged of absolute hereditary monarchies. Need we suggest here that no divine law natural or positive determines the order of succession to monarchies, whether the *general hereditary*, and that either by males only, or also by females; or the *lineal hereditary*. In the succession to private fortunes, tho' this be manifest in general, that the goods plainly acquired for the behoof of a man's family and kinsmen, should descend to his family or kinsmen upon his decease; yet there are not a few difficulties in determining the proportions. But as to civil governments, which, 'tis obvious, were never constituted for the behoof of a family, but for the interest of a whole nation; there seems no natural reasons that the succession to them should depend upon the proximity of blood to the former possessor; and much less that the lineal succession should

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be regarded. * All such right of succession must arise from human laws, or decrees of a people, and these sometimes very incautious and imprudent.

VIII. As to that much celebrated *right of conquest*, by which the conqueror claims the civil power to himself and his heirs over the conquered people; it has little better foundation generally than the claim of robbers and pirates upon persons and their goods which have fallen into their hands. † For first, unless the conqueror had a just cause, he acquires no right. And then tho' his cause was just, yet, as we said above, ‡ his claim has certain bounds; nor has he a

* See Book II. Ch. viii. 4. The decisions of some questions about the succession in hereditary lineal kingdoms, turn upon very fantastic reasons. Some alledge proximity as a natural reason; and yet an elder cousin-germain's grandchild, shall often be preferred to a younger cousin-germain. They say too that seniority is a natural reason of preference; and yet the infant-grandchild of a deceased elder brother takes before a second brother of mature years. The pre-eminence of sex too is made a great matter; and yet the infant-granddaughter by an elder uncle deceased, shall take before a younger uncle. In general, these potent causes of preference, proximity, seniority, and the sex, are not regarded as they are found in the competitors themselves; but as they were perhaps in their great-grandfathers or great-grandmothers, deceased an age or two before.

† Upon this subject see *Locke on Government*; whose reasonings are well abridged in Mr. Carmichael's notes on Puffendorf's smaller book. Book II. ch. x.

‡ Book II. ch. xv. 5, 8. and Book III. ch. iii. 2.

right to exact more from the vanquished than what is requisite to repel the injury attempted, to repair all damages done, or to obtain sufficient security against injuries for the future. If he insists on more, he has no justice on his side in such demands. Now it is never necessary, either for averting of injuries, or repairing of damages, that the conquered should be deprived of their liberty, or independency, and be reduced into the form of a province to the conqueror. Nay 'tis generally very pernicious to the common interests of mankind, that states should thus enlarge their power, and make it formidable to all around them. All present danger to the victorious is averted, and full reparation of damages generally obtained, long before their enemies are entirely subdued and over-run by their arms. The conquerors generally soon take to themselves abundant compensation out of the moveable goods of the conquered: and every state when thoroughly defeated, would always consent to make compensation this way, nay would pay an annual contribution for a certain term, to make up what was wanting; rather than lose their liberty and sovereignty, and be subjected to foreigners. And surely by these ways all damages could be abundantly repaired. *

As to securities against future injuries: surely such

* The reasonings in this and the following articles are designed against the pleas of Grotius and Puffendorf for the rights of conquest, and *patrimonial kingdoms*, or *principalities*, founded on it.

securities as are universally allowed to be sufficient against a state yet retaining much of its strength, shall be more than sufficient against one wholly exhausted and almost ruined by war: now in all treaties, these are deemed sufficient securities against states yet retaining much of their force, if they deliver hostages, give up their fleets, or a great part of them, surrender frontier towns with their fortifications, or receive garrisons of their neighbours into them, or even if they dismantle them, or demolish all the fortifications. Nor is there any state that would not rather consent to all these, rather than become a province subjected to another.

IX. If it be alledged that punishments should also be inflicted as a further security by deterring others: yet surely none should be punished but the guilty. Now the far greater part of any conquered people were involved in no guilt by their governors having entered into even the most unjust wars. * The conqueror therefore can demand no more of the body of a people than that they either give up their injurious governors, or desist to defend them any further, that the victor may punish them as they deserve. But as to any thing done unjustly or inhumanly in public wars, the common interest of mankind would dissuade from making it matter of proper punishment. Within the bounds of any regular polity, 'tis generally highly pro-

* See Book III. ch. iii. 2.

bable or certain that the power of the laws and magistrates will be superior to that of any criminal citizens; and that therefore they may be brought to justice. But in public wars, the forces of the parties by their confederates and allies are so generally brought to a parity, that the event is very uncertain: and the just cause is often unsuccessful. This should restrain conquerors even in the justest causes from any severities, under the notion of punishment; as they will become precedents to others in very bad causes, which yet they may judge to be just. The victorious therefore should beware of establishing a precedent, which may be followed thereafter against themselves or their friends.

'Tis vain to alledge any tacit convention between the parties in war, that that side shall have the civil power over both which happens to be victorious. Taking arms is rather an open declaration of the contrary, that neither side intends to submit its rights of any sort to the other; unless in those cases where there has been such covenants expressly made; nor was it ever, in any other case, deemed perfidious, that the party defeated rallies its forces, makes new levies, or gets new allies to continue the war. Can any one pretend, that that side which has a just cause, defending or prosecuting its own rights, makes any such convention? and if one side is known not to do it, we can never presume it on the other side. The patrons of this right of conquest too, can alledge only that the su-

preme governors consented, and not the body of the people: but with what shadow of right can any governors, whose power was granted to them only in trust for protection of the people, pretend to alienate or transfer the whole people with all their rights to another, either absolutely or upon any contingency? suppose the governors made such an express convention: by this audacious perfidy they plainly forfeit their power; nor is the state bound by such a deed.

X. SINCE therefore all the authors who plead that certain civil sovereignties are *patrimonial*, so that they may be sold, divided, or any way transferred at the pleasure of the sovereign, suppose also that they are generally founded in conquest; what is said above shews that such power has no just foundation. Nay if it should happen that a state in the greatest consternation, upon an invasion from barbarians, should by their own deed submit themselves and all their rights to some potent neighbour, demanding nothing from them but protection; yet even such a deed cannot constitute a patrimonial power. * For not to mention the exception of unjust force and terror; or that this covenant being plainly of the onerous kind, yet does not maintain the essential equality: the very nature of the covenant, and the matter of it, shews that no patrimonial power could be intended in it. A state by submitting itself to a humane, civilized neighbour

* The reasons here confuted are found in Grotius, L. I. iv.

which exercised a gentle rule over its subjects, cannot be deemed to have consented also to any manner of oppression or vexations that thereafter this neighbour may inflict on them; nor that they should be made over to any barbarous prince or people at the pleasure of those they entrusted themselves to. Nay if this superior state should attempt any thing very oppressive of this nature, the subject-people may justly shake off the yoke: since it was plainly upon other terms that they subjected themselves. They have a right to demand arbitration, as to the equity of any thing imposed beyond what should be deemed a just compensation for the protection received.

Nor can any right of sovereignty arise from any seeming consent of the conquered, which was only extorted by present force. For we shewed * above that such force is plainly unjust. But if the victor establishes among the vanquished such an equitable plan of civil power, as sufficiently consults their future safety and prosperity, so that upon experience of it they are truly satisfied to submit to it; this subsequent consent becomes a just foundation of his power, and is a sort of civil expiation of the injury done in the conquest.

XI. BUT further, as the right of any person of the royal blood to succeed upon the demise of his predecessor, is not founded on any natural causes, but solely

* § 8th of this chap.

upon some old law or decree of the state: the words of such laws or deeds are to be understood in the same way as like words about other matters deemed hereditary; and thus we are to collect from them what was the intention of the people in such deeds. When therefore this universally obtained in any country, that when the present possessor of any thing hereditary forfeits it, he forfeits not only for himself but all his kindred; we justly conclude that the peoples intention was that the forfeitures of the hereditary sovereignty should be in the same manner. The plea against extending forfeitures to the whole kindred of the person forfeiting, is very strong and plausible as to private fortunes, which all know were acquired chiefly for the behoof of the proprietor and his family; and this according to a natural obligation: so that children and kinsmen too have a natural claim to be supported and have their condition advanced out of such fortunes: and 'tis unjust that the fault of one of the joint proprietors should prejudice the rest, and prevent their obtaining what they are naturally entitled to. But as to hereditary sovereignties the case is quite different. They were not constituted for the behoof of the royal family, nor founded in consequence of any just claim they had for their own behoof; but for the interest of the whole nation, and chiefly to prevent the mischiefs to be apprehended in new elections of sovereigns: and therefore they are much more justly

made liable to entire forfeitures from the whole family, than any private fortunes.

As therefore a people may justly dethrone a perfidious prince; they have a better right to exclude from the succession any one who shews himself plainly unfit for the trust: and such are those who hold tenets about divine rights which must excite them to trample upon the most sacred rights of the people, as soon as they get into power; or those who possessed with some furious superstition will subject their crown, or alienate no small parts of the supreme power, to some foreign prince, under the shew of a religious character; and at the same time think themselves commissioned by God to break through in the most audacious manner the fundamental laws or constitution, and all limits set by it to their power; and to force the subjects by the severest tortures either to believe, or falsely profess to believe, the most monstrous absurdities in religion, and to worship God in a way they judge impious. Any heir apparent who professes such tenets, or refuses upon a just demand to renounce and abjure them in the most solemn manner, may be excluded from succession with much better ground than if he were an idiot or a madman; as the holding of such tenets must make him more dangerous to a free people than any folly or madness.

What we have said relates not only to monarchs but all sorts of governors, and to the power of a state itself over its colonies, or provinces. If any citizens,

with permission of the government, leave their country, and at their own expence find new habitations; they may justly constitute themselves into an independent state, in amity with their mother-country. If any are sent off at the public charge as a colony, to make settlements subject to the state, for augmenting its commerce and power; such persons should hold all the rights of the other subjects, and whatever grants are made to them are to be faithfully observed. If the mother-country attempts any thing oppressive toward a colony, and the colony be able to subsist as a sovereign state by itself; or if the mother-country lose its liberty, or have its plan of polity miserably changed to the worse: the colony is not bound to remain subject any longer: 'tis enough that it remain a friendly state. Nor are we to imagine that any early covenants founded upon errors about the most essential points in view, can still bind large societies of men fit to subsist as happy independent states, to continue in a submission ever since of all prosperity and safety. Nor has any thing occasioned more misery in human life than a vain and insolent ambition, both in princes and popular states of extending their empires, and bringing every neighbouring state under subjection to them; without consulting the real felicity either of their own people or of their new acquisitions. And hence have arose these vast unwieldy empires; the plagues of all around them; which after some time are ruined by their own bulk, with vast destruction of mankind,

C H A P. VIII.

Of CIVIL LAWS and their EXECUTION.

THE power of making and executing laws is the most important internal power. Every law should be intended for some real utility to the state; and as far as human power can go, laws should enjoin whatever is of consequence to the general prosperity. But if in the very constitution of the civil polity, the sovereign or chief magistrate is only entrusted with such power as is requisite for the preservation of the secular rights of men; then they cannot exert any sort of coercive power about the means of forming mens minds to religion or inward virtue. But when they are entrusted with certain revenues, to be employed for the public utility at their discretion; and where they are not expressly restricted to the care of the secular rights of men; since human happiness chiefly depends upon virtue, the civil governors must think it belonging to their office, to instill into the minds of their subjects the true sentiments of religion and virtue, and to influence their hearts to relish them, by the best instruction and discipline from their infancy, that they may be furnished for all the honourable offices of life.

But at the same time they must maintain to all, their sacred right of judging for themselves; which

would be plainly encroached upon by any penal laws about such opinions, whether secret or divulged, which don't lead to any practices destructive to society. Nay tho' such tenets should be divulged by men who imagine themselves bound in conscience to divulge them; it would generally be more advisable only to insist that such persons give proper security that they will give no disturbance to the state, and bear their share in all services required of them for the public; and to punish rigorously only the injuries done in consequence of such dangerous opinions; rather than to inflict any penalties on men for these opinions themselves. 'Tis often better to leave such tenets to be exploded by the juster reasonings of wise men, than to proceed to any severities on account of the tenets themselves.

But as the far greater part of every people will not use this right; but induced by specious appearances of sanctity, and ostentation of superior wisdom in some designing men, will incautiously give up themselves to be led by them; it must plainly be the business of the magistrate to get this *leading* into his own hands; by appointing men of character and learning to teach the people the just sentiments of religion and virtue, and to confirm them by the most effectual reasonings; that they may not be perverted by the wicked arts of others. And if men in power have any tolerable wisdom, and hold any tolerable scheme of religion, they will always find the far greater part of the people very tractable to follow as they lead them, so that little

need be apprehended from a few who may dissent from the public schemes.

The exacting by law, under any penalties, that people should conform in opinion and practice to any tenets or rites of worship, that are either false and absurd, or tho' true yet of little consequence, generally occasions great mischief to any state; since according to the different geniuses and tempers of men, they have and always will run into different opinions and practices in matters of religion: and thence some of the most useful hands will desert the country when they are harassed about such matters: the state will be plagued with sedition and discord: and the activity of men turned off from the services and occupations which are most useful to the community, and occupied upon trifles. No good subject should meet with any vexation, or be excluded from any civil right, on account of any opinions or modes of worship which don't hurt any of their neighbours.

II. THE example of those in supreme power will have the highest influence in promoting the virtue of the people: especially if they advance to honours only such as are of approved integrity and purity of manners. The populace in their elections, if they are truly free, always follow some appearance of virtue; and will seldom promote any but such as are of distinguished integrity. Nor will honour or power alter the tempers of the persons advanced, if there are proper terms fixed by law for the holding of offices; so

that upon expiration of the term, they must return into the common condition of the people. Where the power of promoting to offices is in the monarch, the men promoted will probably resemble their political creator.

Next to *piety toward God*, the great source of happiness, and the strongest incentive to all other virtues, the virtues to be most cultivated in a state are, *temperance, justice, fortitude, and industry*. Such temperance as restrains not only excessive impulses toward pleasure, but all luxury and immoderate expences on the show and grandeur of life, must be allowed, by all who consider it, to be necessary to the prosperity of any state. There is a certain measure of sensual pleasures and elegance both grateful and innocent; to provide us to this degree God and nature have produced many fruits and other materials with exquisite art. Nor is there any moral turpitude in the enjoyment of any pleasure, if it be inconsistent with no duty of life, nor tends so to soften or weaken the mind that it shall be distressed in the want of it, or be apt to neglect and counteract its duty to obtain it. Luxury therefore should be defined, "such an excessive desire " or use of the lower pleasures, as is inconsistent with " discharging the offices of life." Nor is it possible precisely to fix general measures of lawful enjoyment for all; they must be various as their fortunes, attachments, dependent friends, and even bodily constitutions are various. Now luxury, in this notion of it, as

it lavishes out mens fortunes, and yet increafes their keen defires, making them needy, and craving; it muft occasion the ftrongeft temptations to desert their duty to their country, whenever it is inconsistent with pleasure: it muft lead the citizens to betray their country, either to a tyrant at home, or a foreign enemy, when they cannot otherwise get funds for their luxury. With the luxurious generally every thing is venal.

Nor is it juftly alledged, that luxury is neceffary or useful to encourage arts and manufactures. For arts and induftry may be encouraged to the higheft without any luxury, at leaft all innocent, neceffary, or elegant arts. Men of higher fortunes may without any luxury purchafe the moft ingenious and nice manufactures, as far as their feveral obligations in life allow it. And if any fuch deny themfelves fuch expences, from views of a finer liberality, in raifing the condition of indigent friends; they along with their families, kinfmen, and friends thus fupported, may make a much greater confumption of the very fame products and manufactures, or of others equally deferving encouragement in the ftate; and thus they with their dependents are more beneficial to artificers.

Need we mention too, that a fober, frugal oeconomift, in a long and healthy copious life, generally makes greater confumption than a prodigal of equal fortune; who is often punifhed with a long tract of difeafes and penury, for the extravagance of a few years. And then, as lower orders are always imitat-

ing the manners of their superiors; the plague of luxury will soon infect the very lowest, and even the mechanics. Then they cannot subsist without higher prices for their labours; the manufactures must consequently rise in their prices, and cannot be vended abroad, if any more industrious and sober country can afford the like in foreign markets at lower prices.

III. 'Tis scarce necessary to shew the necessity of *diligence* and industry, since the wealth and power of a nation depends almost wholly upon them. Agriculture is necessary, to prevent a constant drain for the food of our people, to obtain grain for exportation, and furnish the very materials for many of our artizans, which otherwise we must buy abroad. And in like manner all mechanic arts, either simpler, or more elegant, should be encouraged, lest our wealth be drained by our buying foreign manufactures. Merchandize and fishery are of great consequence: nay the very building of ships too, that we may not lose the profit of the carriage either of our own or foreign goods, and with this, the training of sailors; which contributes both to the increase of wealth and to the defence of the state in war. The mechanic trades should be held in reputation, so that people of better fortunes and families may not deem it below them to be concerned in them.

IV. THAT justice is necessary cannot be a question. For if laws and justice don't prevail, as without them no right natural or acquired can be safe, all in-

dustry must languish. Nay as merchants must augment their prices in proportion to all their casual losses: where there's much injustice, the merchants must charge in the price of their goods the losses they sustain by the frauds of the unjust; and thus the best citizens must be loaded with this burden: nay further, any neighbouring state where justice more prevails, if other circumstances be equal, can undersell us, on this account. Where therefore justice is not maintained, the commerce of a nation must sink, with all its attendant profits.

To examine into the best methods of *administring justice*, would require long dissertations. We only briefly suggest, that a small number of simple easy laws might sufficiently protect and regulate the citizens, if there were such a contrivance for the courts of judicature, as would entrust the decision of suits to men of great goodness and equity and approved integrity: severe restraints upon vexatious or oppressive suits would be of the highest advantage. The earlier laws and constitutions of the Romans about these matters are worthy of imitation.

V. MILITARY arts and virtues are accomplishments highly becoming all the more honourable citizens. Warfare therefore should be no man's perpetual profession; but all ought to take their turns in such services. And however it may be observed, that, when according to modern custom, armies are made up of the very dregs of a people, fellows too dissolute

and worthless for any other occupation, whosoever takes to this way of life for a few years is made unfit for any other occupation for the future; yet the case would be quite otherwise if all the best citizens served in our armies by turns. This method too would bring along with it these grand advantages: all the people would be trained and skilled in military service. Should one of our armies be entirely cut off, we could have another of veterans immediately: were the chief officers cut off; we would have others of equal experience in readiness to take the command: and it would be no easy matter for either any ambitious citizen at home, or any foreign invader, to trample upon the rights of an armed people well trained in military service.

VI. THE laws and whole constitution of the state should be such as may prevent any smaller bodies of citizens to be more strongly attached to each other, or to any foreign interest, whether of prince or bishop, than they are to their own country, or have greater dependance and expectations of promotion by them. And the citizens should be taught that no antient engagements, obtained from their ancestors by the most impious frauds, can be of any validity against the prosperity of their country. For it cannot be of use to religion that ecclesiastics should have great secular power of any kind; and much less that all ecclesiastics through the world should be deemed as a great corporation to be governed by a common

prince or council; who too should have power to promote, in many nations, what favourites they pleased, to high dignities and princely revenues; and to whom there should lye appeals from the highest courts of the several nations, in matters upon which wealth and power depend.

VII. It is one great design of civil laws to strengthen by political sanctions the several laws of nature; and to point such forms of business, and of process in courts, as may prevent frauds and promote justice. The populace often needs also to be taught, and engaged by laws, into the best methods of managing their own affairs, and exercising their mechanic arts: and in general, civil laws should more precisely determine many points in which the law of nature leaves much latitude.

From the very best body of civil laws certain external rights must arise, which tho' no man can insist upon with a good conscience, yet if the persons to whom they are granted claim them, they must hold them with impunity: nor can any one rightly have recourse to violence against such rights, or obtain redress at law. Many also of the most sacred duties can be no matters of compulsion, but must be left to the honour and conscience of those concerned. There are certain benefits granted by law, which no good man would claim, but when claimed they cannot be refused. * Any such covenants or testaments too as for

* On these two heads there are two good orations of Bar-

want of the legal formalities are not confirmed by human laws, a good man would often think himself bound to hold as valid, if there's nothing appointed in them beyond the moral power of the parties or testator, nor contrary to equity. But if they are wrong in either of these respects, a good man may take the benefit of the law.

VIII. THE *sanctions* of laws are *rewards* and *punishments*. There's this common reward annexed to obedience to civil laws, that these who obey them continue to enjoy all the advantages of civil life. Some few civil laws have peculiar rewards, such as honours, and premiums in money. The natural honour is "the good opinion others entertain of our moral excellencies." Civil honours are "these external indications of deference which are appointed by law."

The *simple estimation*, or character of common honesty, is so much every man's right, that no governors can deprive one of it at pleasure, without a cause determined in judgment. The higher estimation, or *intensive*, as some call it, is not a matter of perfect right; as no man can at the command of others form high opinions of any person, without he is persuaded of his merit. But as to external marks of deference, and precedency, the civil powers have a right to determine about them, as they do about other civil beyraque, annexed to his translation of the smaller book of Puffendorf, *De legum permissione et beneficiis*

rights. If these are conferred only upon real merit, they will be of high account with wise men. But if they are often conferred injudiciously, they will grow mean and despicable to wise men, and matter of scorn and jest: as they are often seen where they are hereditary, and there's no censorial power to degrade the unworthy.

IX. THE true end of all punishment is this, that all bad men by the terror of them may be restrained from doing any thing injurious, and thus the community be preserved in safety. *Chastisement* as distinguished from punishment, has in view only the reformation of the sufferer: and *reparation of damage*, aims at the utility of the one who sustained the loss: to this men are often bound even without any preceeding crime or fault.

Neither anger, nor hatred of the criminal, nor even that honest indignation at moral evil, which is natural to every good man, should be the sole springs of punishing: but rather a calm regard to the common interest, and the safety of the innocent. The true measure of punishment is not to be taken from the degrees of moral turpitude, but the exigence of society. A great deal of high moral turpitude must pass unpunished: and yet on the other hand if the safety of the community require it, some actions which shew smaller depravity of temper, must be punished severely. Thus no penalties are inflicted on ingratitude, and want of humanity; while any insurrection

against the supreme power, tho' upon plausible pretences of the right of some competitor, must be punished severely. But the crimes which deserve the highest punishments on both accounts, are the public ones of men in power, perverting what was intrusted to them for the safety of others, to the oppression of the citizens.

Though it may not be necessary to punish the first motions or hasty intentions of wickedness, nor is it often practicable; as such rash motions may upon sudden provocation arise in the breasts of good men, who will soon restrain them of themselves: yet such as have proceeded to any external actions which might have effectually accomplished the evil, but were prevented by accident, or force, or the timely aid of others, and which shew furious malice and obstinate purposes of injury, these deserve as high punishments as if they had obtained their effect. Sometimes indeed the public interest may require the granting even rewards to some bad actions, and pardoning the greatest criminals.

The *respect of persons* which is highly culpable in judgment, is when any regard is had to such qualities of actions or circumstances of the guilty as neither affect the turpitude of the crime, nor the sense of the punishment, nor the common interest of society. But circumstances which affect any of these three must always be regarded. And therefore when other circumstances are equal, pecuniary fines are to be en-

larged for equal crimes according to the fortunes of the criminals, and corporal punishments according to their strength of body; and ignominious ones are to be abated according to the dignity of the persons.

But we must not go on in increasing without bounds the severities of punishment upon the higher crimes. For frequent spectacles of tortures have a tendency to diminish our natural compassion and tenderness of heart, and to make the tempers of men more savage and cruel.

X. 'Tis unjust to punish any man for the crimes of others; nor is it equitable to confiscate the whole fortune of a family for any crime of the head of it. All the natural claims of the wife and children to a support out of it, as well as debts due to any innocent persons, should first be discharged. Nor is it naturally just to punish any bodies corporate for any crimes; the guilty only in such cases should be punished, whether private persons or magistrates of the corporation. It may sometimes be just to take from the corporation either these privileges, or fortifications, or arms, by which the criminal members of it were encouraged or enabled to do injuries to their neighbours, if security against like injuries can be obtained no other way. The corporation may sometimes be bound to compensate damages out of its public stock, or even the private fortunes of its members, when the criminals can't be found, or cannot repair the damage; if it has been occasioned or encouraged by any of these

advantages, privileges or fortifications, which the body had obtained for their own behoof.

XI. EVERY government has the justest right to exact tributes from the subjects by law, provided they are no more than what are requisite for the prudent administration of public affairs; as this public expence is made for the behoof of all. The violating such laws by any subject is equally criminal with theft. Nor is the injury so properly done to the governors, as to our fellow-subjects, who must be obliged to make up deficiencies occasioned by these frauds, some other way, and must be subjected to other burdens on this account; beside many other inconveniencies. There is no other possible method, of making men contribute in just proportions to the public charge, than by instituting a *census*, or valuation of all their fortunes.

XII. THESE are the obligations of subjects toward their governors: first, they are sacredly bound to obey all their just laws and commands: and secondly, if the thing commanded be a matter committed to the power of the governor; 'tis generally the duty of subjects to obey, even when they judge that the orders are imprudent. This holds most obviously in military operations. For to allow the inferior to judge of his orders, and only to obey when he thinks them prudent for the good of the state, would destroy all military discipline, and reduce an army into a tumultuous mob.

3. Hence it follows that in matters committed to

the wisdom of governors, the subjects may act a just nay an honourable part in obeying such orders as were very criminal to their governor: the subject by obeying is preventing the greatest mischief; since from the relaxing of all order and government, far greater evils must generally ensue, than from the execution of very imprudent orders.

4. But if the thing commanded seems to the subject so entirely pernicious and ruining to the state, that it were better to break through and destroy the authority of such commanders, than to execute such destructive orders: the subject may refuse obedience. But in such matters they should use the utmost caution that they don't judge amiss.

5. Where we are commanded to do any act directly irreverent and impious toward God, or contrary to the perfect rights of others; or where the matter commanded was not committed to the power of the commander; we are under no obligation to obedience. Nay 'tis often highly honourable to endure rather any punishment, than submit to a precedent that may be ruinous to our country. We shewed above * in what cases it is lawful for subjects to resist their governors.

The common duties of all subjects must easily appear from the nature and origin of civil power and the political union. Their peculiar duties arise from their several stations, relations, and offices in the state.

* Book III. vii. 2.

C H A P. IX.

The LAWS of WAR.

THE rights of war and treaties are of that class which respect foreigners. The principal matters of right in war, as to their causes and bounds, were explained in the former book*, when treating of war among persons in natural liberty. The same maxims hold in the public wars of states, which with respect to each other are in the same state of natural liberty.

As to public wars of a less solemn kind, without the order of sovereign states on both sides; they may be sufficiently understood from what was already said about the right of governors to repress tumults and insurrections, and from the right of resistance that subjects may have in defence of themselves against perfidious governors†. “A war undertaken by order of independent states on both sides” is called a *solemn war*. Nor need we add to the definition, that it be *previously proclaimed*; tho’ it be highly becoming every civilized nation, when they have recourse to force, to let all around know the grounds of it, as soon as they can conveniently. But ’tis plainly not incumbent on the nation invaded by another,

* Ch. xy.

† Book III. vii. 2.

to make a previous declaration before it defends itself. Nor is it always necessary that the aggressor should make such previous declaration; as perhaps his surest method of obtaining his right may be by surprizing the enemy; and a previous declaration might prevent his best opportunity of success. What has led ingenious and learned men to make a previous proclamation necessary, was too great a deference to the *foecial laws* among the Romans. But as contending by violence is not agreeable to the rational and social nature, 'tis unworthy of a good man, when he is forced to betake himself to it, not to declare openly, as soon as he can with safety, his motives and intentions; that all may see that he could not otherwise obtain his right.

As in civil wars there are often specious reasons on both sides; all neighbouring states should shew the same favour to both the contending parties as to these engaged in solemn wars. Nay in civil wars there are as frequently as in the solemn, just causes on one side, and specious ones on the other. Nor is either of the parties engaged in them to be deemed like robbers or pirates, abdicating or forfeiting all the rights of mankind.

II. THE laws of war either respect the contending parties or neutral states. "What right reason shews necessary to be observed in war for the general interest of mankind" may be called *the law of nations of necessary obligation*. But "what a long

“ tract of time has made customary, with a tacit approbation or consent of nations ;” which however might be altered by contrary custom, or taken away at once by a timeous premonition of all concerned, we may call the *voluntary law of nations*.

The just causes of war were explained in the former book *. But with respect to the neighbouring states we may suggest, that as among citizens there are allowed actions at law for prevention of damages not yet done, and agrarian laws restrain such excessive acquisitions of wealth as may prove dangerous to the society, tho’ the acquisitions are not to be made by injurious means ; so sometimes among neighbouring states, a dangerous increase of power in any one of them may give a just cause of war, if no gentler securities can be obtained : especially when the people of that state shew a general ambition of military glory and conquest, and quit all peaceful arts : so that their neighbours must be in perpetual dangers, unless they also quit the innocent arts of peace, and are always a training to war. But this is an instance of these *extraordinary rights* which seldom occur.

In public wars the term of commencement, and the term of ending, or the bounds of our demands, may be fixed the same way as those of private persons in natural liberty ; of which formerly.

The just methods of carrying on war are open violence, or such arts of deceiving as carry along with

* Ch. xv.

them no profession or tacit engagement of communicating our sentiments to the enemy*. Violence is justifiable only against men in battle, or such as violently obstruct our obtaining our rights; altho' by the inhuman customs which have prevailed, men may exercise with impunity any sort of cruelties toward their enemies. 'Tis also very ordinary to deceive enemies by any false narrations, or any sort of discourse, except such as imports making some covenant or treaty with them. But as it is by treaties alone that either peace can be restored, or more humane methods of war maintained, and horrid mutual cruelties prevented; it never was, nor ought it to be allowed to deceive enemies by any form of treaties.

III. THERE are many other obligations introduced by long custom importing tacit covenants; which however could be taken away by a timeous premonition of all concerned. Such as, that none should use poisons in war, or employ any of the enemies subjects or soldiers to assassinate their prince or their generals. That all messengers or envoys, or ambassadors sent on either side should have protection to their persons, is indeed matter of necessary obligation; since it is by their means alone that peace can be obtained, without the entire destruction of one side, or any humane methods of war preserved. But 'tis matter only of voluntary right that passports should be mutually allowed, to any subjects of the hostile nation who come un-

* Book II. x. 2.

armed, to travel through their countries, or to reside in their cities.

IV. UPON what grounds of justice the goods of the subjects of hostile states are seized mutually, comes next to be explained.

1. All states in amity are bound to restrain their subjects from depredations, or any way injuring the subjects of states around them: and when such injuries are done, they are obliged to compel the authors of them to make reparation. We speak now of subjects who are amenable by law, and not of pirates or robbers.

2. When such reparation is demanded and refused, the injured state may justly have recourse to force, seizing the goods wrongfully taken, or if they can't find them, taking to their value from the authors of the injury, or from the state, which by defending the depredators bring the guilt upon themselves. And this right is still more obvious if the injuries have been done by public order.

3. If there's no opportunity of seizing the public goods of the injurious state, the injured may seize the private goods of any citizens of that state. For as the political constitution and the civil power was erected for the behoof of all the subjects, they are bound to repair any damages arising from this contrivance which they fell upon for their own utility*. And the civil

* Book II. xiv. 2. and Book III. iii. 2, art. 5.

powers by giving their protection, have plainly supported and excited their subjects to such injuries.

4. But then these innocent subjects who suffer thus by these reprisals, on account of their community, may justly claim from their community to have their losses repaired, out of the common stock, or out of the goods of the depredators. It certainly would be the more equitable and clear way, that goods thus seized as reprisals from the innocent subjects were only detained as pledges, till the injured state received reparation another way, and then were restored to the owners. But a contrary custom has prevailed†; and the old property is on all sides deemed to be extinguished, as soon as such goods taken are brought into any fortresses of the captors, and adjudged, either to them or their community: so that should they even be retaken afterwards, the old proprietors cannot claim them. Nor can they be taken by violence, or any claim be made upon them by the old proprietors, after they are any way legally acquired by any subjects of a neutral state, and brought within their territories.

V. THE principal laws with respect to neutral states are briefly these. 1. A neighbour-state under no engagement to send auxiliaries to either side, ought neither to be involved in the war, nor sustain any damage by it.

† Probably with a view to make the soldiers more active in distressing the enemy: as large shares of the goods taken are usually given to the captors.

2. If the neutral state by some former treaties be obliged to send auxiliaries to both upon the event of wars; when its two confederates are at war with each other, it ought to send aids to neither; or if it is inclined to engage in war, it should send aids to that state whose cause it judges to be just. For all such offensive and defensive alliances bind only upon supposal that the cause be just: nor can they bind the neutral state to make war upon such as are allied to them by solemn treaties.

3. A neutral state may justly purchase, or take by any other title, any moveable spoils taken on either side after they are adjudged as lawful prize: nor can the former proprietors have any further claim upon them. The neutral states or their citizens are no competent judges of the justice of the war and the captures; and they may frequently be ignorant whether the goods they purchase are prizes taken in war or not.

4. But as to lands, forts, or cities the case is different. The neutral state must know by what title they are held, and that they were taken from a state in amity with them: and by purchasing them they must preclude that state from retaking them again. What annual rents or services may be due by any district or smaller town, to any great city or fort lately taken by the enemy, may justly be paid by such as are neutral, to the present possessor; and the refusal of such payment might be deemed a declaration against the jus-

tice of the capture. If such great cities or forts be again recovered by the old governors, the payments made to the enemy during his possession must be sustained as good; nor can the repayment of the same sums or services be demanded. But if the violent possessor pretends to sell or alienate or relinquish for ever any such rents or services due by a neutral territory, or to exact payments of old debts, or to abolish them, the deed will not be valid against the old proprietor when he recovers his old possessions again.

5. Whatever new favour is granted, by a neutral state to one of the parties in war, it must grant the like to the other, if it would preserve neutrality; such as the allowing any of its subjects to enlist, or hiring out its troops, or supplying with military stores. Indeed the sending arms or military stores, by way of merchandize, to either of the states in war, is deemed commonly by the other a breach of the neutrality; and they are accordingly seizable: and so are even common provisions into any place besieged.

6. Neutral states must not be hindered in their commerce with either of the parties, except in arms or military stores; the nature of which too 'tis not easy to define. A neutral state may set to freight its merchant-ships to either side for trade. If they are taken, the enemy's cargo is justly seizable, but not the ship. Neutral states may freight the ships of either side; and if they are taken, the cargo cannot be made a prize, but the ship may. Nor should any neutral

state lose any right of pledge or mortgage formerly constituted, in any goods moveable or immoveable which happen to be taken in war.

7. Neither of the parties at war ought to use any violence against each other within the territories of a neutral state, by taking men, ships, or other goods of their enemies, found in neutral ports. And the territory of each includes not only their harbours, but any narrow bays running far into the land, the shoars, and such contiguous parts of the sea as are within reach of any military engines. For if such violence were allowed, a neutral state might suffer greatly by being made a seat of war; and their commerce with both sides must be entirely obstructed.

8. As to deserters and fugitives; neither of the contending parties can exercise any jurisdiction conjoined with force, over their own citizens within the bounds of a neutral state, except by commission first obtained from the civil powers of the neutral state. No state indeed should protect such as have been guilty of the more atrocious, detestable crimes; such criminals should be seized and delivered up to justice. But as to deserters in war from either side, or persons who have fled on account of religion, or any state-crimes they committed, in conjunction with any state-faction, upon some plausible shews of right; a humane custom has obtained that they should find protection in all other states, while they don't make any new attempts against the civil powers of their country.

C H A P. X.

*Of TREATIES and AMBASSADORS, and the entire
DISSOLUTION of STATES.*

THE chief laws of nature about treaties were explained in the doctrine of contracts in natural liberty*. But we must remember that the exception of unjust force and fear cannot be admitted against the obligation of any treaties of peace; otherwise the old controversies might always be kept a-foot. And yet such exceptions may justly take place when the war is manifestly and avowedly unjust on one side; or if the terms imposed by the more potent side are manifestly injurious and contrary to all humanity. In these cases the party injured may insist upon an arbitration; and if the other side refuse to submit to it, each side must by force consult its own safety and the maintenance of its rights, by what aids it can find.

Treaties are divided into *real*, and *personal*: the personal, which are less in use, are entered into in favour of the prince's person, and cease to bind upon his demise. The *real*, respect the body of the people, or the nation, which is deemed immortal. Treaties are also divided into the *equal*, such as bring equal or proportionable burdens on each side, and *unequal* which bring unequal burdens. But 'tis not every un-

* Book II. ix.

equal treaty that any way impairs or diminishes the † majesty and independency of the side submitting to the greater burden.

Hostages in former ages were securities commonly given for performance of treaties, but they are now gone into disuse; because it would be exceedingly inhumane to treat the innocent hostages any way harshly because of the perfidy of their country.

II. In making treaties *ambassadors* are employed. Their rights are all the same, whatever names are given them, if they are entrusted to transact the affairs of a sovereign state. Their persons should be sacred and inviolable, as we said above. They have a just natural right to demand that their proposals should be delivered. But as to an allowance to reside any time in the state to which they are sent, they may claim it as due out of humanity, but cannot insist on it as a perfect right. Since the business of the more active ambassadors is much the same with that of spies upon the nations where they reside. If they are allowed to reside; the law of nature would give them no higher rights or immunities, than any other foreigner might claim without any public character.

But by the voluntary laws of nations, they have many singular privileges and immunities, both for themselves and all their necessary retinue: all which however any state might without any iniquity refuse

to grant them, if they give timeous intimation of their design to do so to all concerned.

1. This is customary in the first place, that no action can be brought against an ambassador or his necessary retinue, such as his secretaries, or domestics, in any courts to which he was not subject previously to his taking this character. What has been in view in this custom, was this; that an ambassador, the more vigilant he is in his office, will be generally so much the more disliked and hated in the state where he resides: and therefore were he subject to its courts, he would not have a fair hazard for justice in a nation prejudiced against him. The subjects of the state where he resides may easily abstain from any contracts with him in which they may be wronged, since they can have no action against him. Should an ambassador or his retinue commit any outrageous crimes; he may be sent home, and justice demanded of his constituents; the refusal of which may be a just cause of war. If any ambassador intermeddles in trade, his merchant-goods, except such as are necessary for his support in his embassy, are liable to attachments or arrests for the debts he contracts in trade.

2. An ambassador's house is deemed a sanctuary to himself and all his retinue and attendants: of which however a list may justly be demanded upon his admission; and the state where he is to reside have a right to fix what retinue of his they will receive or grant immunities to. But an ambassador by this pri-

privilege must not impair the jurisdiction of the state where he resides over its own subjects, by making his house a sanctuary for any criminals among them.

3. An ambassador has the ordinary power of the head of a family over his own domestics; or such jurisdiction in their civil actions as his constituents have granted him. But neither an ambassador, nor even a prince residing in a foreign state, has a criminal jurisdiction or power of inflicting capital punishments upon his own subjects, except by permission of the state where he resides.

4. *Inhibitions* may justly be used against an ambassador, to restrain him from any outrages against our subjects: and they themselves have the natural right of repelling force by force.

5. No state is bound to admit any exiled criminal or fugitive subject of theirs, as an ambassador from any neighbouring state. But if such a one is sent with such commission, he cannot justly be seized or punished, but he may be immediately ordered to quit our country.

6. The honours and precedencies of ambassadors must be determined by express conventions or the tacit ones of long custom. The sole natural causes of precedence would be the superior excellency of the constitution of the state he represents; or his own superior personal worth. The absolute or hereditary power of his constituent is the worst reason of all; if we regard true merit, and not customs introduced by barbarians.

III. As to the dissolution of our political relations, we may observe: that by perpetual banishment, one ceases to be a subject any further. But it is not so in temporary banishments; much less in perpetual confinements to any remote parts of the state.

2. No man can claim it as his perfect right to quit his country without the permission of the civil powers or the laws, while it remains unaltered.

3. Where the old constitution is much altered, either by foreign force or any potent faction; subjects who dissent from these changes have a right to consult their own safety elsewhere. And provinces may resume their independency if they can: as they were subjected, as we said above*, only by their own consent, and that to a state constituted in a very different manner.

4. But upon any improvements made in a constitution, subjects can have no just right to desert it.

5. Whatever changes be made by the citizens themselves in their own constitution, their treaties with foreigners still remain obligatory on both sides.

IV. We may from what was said above see, what right any state can have to give up any part of its district, or any province with the people dwelling in it, to an enemy, or any foreign potentate. For first, as the several parts of any community, and even provin-

* Book III. vii. 8, 9. 10.

ces, submitted themselves to the whole body for the common utility of the whole, in which each one was to share; the community has no right to give up or alienate any parts or any provinces without their own consent; or to oblige them to be subject to any other power, when they think they can otherways better consult their own interest. But on the other hand, as their can be no obligation to impossibilities; if a state cannot defend its more exposed parts, or its provinces; it must leave them unprotected: nay, if the safety of the whole cannot otherways be maintained, it may bind itself by a treaty to give no further defence to these parts or provinces. But such a treaty imposes no obligation upon the part or province so deserted, to submit to this new claimant. It may justly consult its own interest any other way; either by obtaining new confederates, or giving itself up to some other state upon as good terms as it can; that it may be protected against the present invader. For that covenant about the common defence of all, by which the several parts were united into one state, is now come into the case of contracts * about what proves impossible to be performed.

What is said about any part of a people or a province, holds also as to any brave citizen, whom an enraged enemy demands to be given up to him. Such a brave man in cases of the utmost extremity may be

* Book III. vii. 8, 9, 10.

as it were abandoned; or no further protected. But his country has not a right to seize and deliver him to the enemy, or to hinder him to consult his safety elsewhere.

V. As to the entire dissolution of states; these maxims hold: when a state is entirely conquered, the several subjects of it, and the provinces too, have a right to secure themselves as well as they can; whether by adjoining themselves to any other state, or by attempting to set up a new sovereign state to themselves in the province. Citizens no doubt are bound to hazard all for their country, and not to despair too hastily about its safety. But if they have made all possible efforts for their country, and yet all in vain, they may justly consult their own safety as they can.

2. If by any unexpected accidents, a state which seemed extinct and conquered for some considerable time, finds opportunity of setting up again independently, its former subjects and provinces seem bound to re-unite themselves to it; provided that during the conquest they came under no new and just engagements inconsistent with this re-union. For such engagements as the citizens or provinces of the ruined state have entered into with foreigners, without any fraud, while their former country seemed destroyed, must be as obligatory as any.

3. A state which has long continued conquered, and was made a province to the conqueror, has lost all its rights over any of its former citizens who have fled

to other countries, and over its former provinces. And tho' after a course of ages a new state should be formed in the same tracts of land formerly occupied by the old state; this new state can claim none of the peculiar rights of the old one. The states occupying the same lands in different ages may be quite different political bodies: and the political body may remain the same when they change entirely their lands, nay while they have none at all in possession.

While our country remains, all good men should be united in this purpose, to deem nothing too hard to be endured or done for its interest; provided it be consistent with the laws of that more ancient and sacred association of all mankind, of which God is the parent and governor. "Our children are dear to us, our
"wives are dear, so are our parents, our kinsmen, our
"friends and acquaintance. But our country contains
"within it all these objects of endearment, and pre-
"serves them to us: and therefore every good man
"should be ready to lay down his life for it, if he can
"thus do it service."

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